

MONTANA LEGISLATIVE HISTORY

Chapter 292 19 93

Bill H _____ S 37

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) Mar 2 ☒ c

Mar 17 ☒ c

_____ ☐ c

_____ ☐ c

Date Out Mar 18 ☒ c

S. Committee on Judiciary

Hearing Date(s) Jan 18 ☒ c

Jan 25 ☒ c

_____ ☐ c

_____ ☐ c

Jan 26 ☒ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

12/23 REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
 1/04 FIRST READING
 1/04 FISCAL NOTE REQUESTED
 1/11 FISCAL NOTE RECEIVED
 1/12 FISCAL NOTE PRINTED
 1/15 HEARING
 1/20 TABLED IN COMMITTEE

SB 36 INTRODUCED BY GAGE

REVISE LAWS TO REFLECT LOSS OF CONGRESSIONAL DISTRICT
 BY REQUEST OF LEGISLATIVE COUNCIL

12/23 INTRODUCED
 12/23 REFERRED TO STATE ADMINISTRATION
 1/04 FIRST READING
 1/05 HEARING
 1/05 COMMITTEE REPORT—BILL PASSED
 1/06 2ND READING PASSED 49 0
 1/07 3RD READING PASSED 50 0
 TRANSMITTED TO HOUSE
 1/09 FIRST READING
 1/09 REFERRED TO STATE ADMINISTRATION
 1/14 HEARING
 1/30 COMMITTEE REPORT—BILL CONCURRED AS AMENDED
 2/02 2ND READING CONCURRED 99 0
 2/04 3RD READING CONCURRED 99 1
 RETURNED TO SENATE WITH AMENDMENTS
 2/08 2ND READING AMENDMENTS CONCURRED 49 0
 2/09 3RD READING AMENDMENTS CONCURRED 50 0
 2/11 SIGNED BY PRESIDENT
 2/14 SIGNED BY SPEAKER
 2/15 TRANSMITTED TO GOVERNOR
 2/18 SIGNED BY GOVERNOR
 CHAPTER NUMBER 52
 EFFECTIVE DATE: 07/01/93

SB 37 INTRODUCED BY TOWE, ET AL.

CREATE OFFENSE OF STALKING AND PROVIDE FOR RESTRAINING
ORDERS

12/23 INTRODUCED
 12/23 REFERRED TO JUDICIARY
 1/04 FIRST READING
 1/04 FISCAL NOTE REQUESTED
 1/11 FISCAL NOTE RECEIVED
 1/12 FISCAL NOTE PRINTED
 1/18 HEARING
 1/26 COMMITTEE REPORT—BILL PASSED AS AMENDED
 1/27 2ND READING PASSED 45 0
 1/28 3RD READING PASSED 44 1
 TRANSMITTED TO HOUSE
 1/29 FIRST READING
 1/30 REFERRED TO JUDICIARY
 3/02 HEARING
 3/18 COMMITTEE REPORT—BILL CONCURRED AS AMENDED
 3/27 2ND READING CONCURRED 98 0
 3/30 3RD READING CONCURRED 98 1
 RETURNED TO SENATE WITH AMENDMENTS
 4/02 2ND READING AMENDMENTS CONCURRED 47 0

4/03	3RD READING AMENDMENTS CONCURRED	45	2
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/08	TRANSMITTED TO GOVERNOR		
4/09	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 292		
	EFFECTIVE DATE: 04/09/93		

SB 38 INTRODUCED BY AKLESTAD
 REQUIRE TWO-THIRDS VOTE IN HOUSE OF ORIGATION FOR REVENUE
 BILLS

12/23	INTRODUCED
12/23	REFERRED TO TAXATION
1/04	FIRST READING
1/06	HEARING
1/29	TABLED IN COMMITTEE

SB 39 INTRODUCED BY KEATING
 DISCONTINUE THE ACUTE HOSPITAL AT THE GALEN CAMPUS OF STATE
 HOSPITAL
 BY REQUEST OF MONTANA STATE HOSPITAL COMMITTEE

12/23	INTRODUCED		
12/23	REFERRED TO FINANCE & CLAIMS		
1/04	FIRST READING		
1/13	FISCAL NOTE REQUESTED		
1/15	HEARING		
1/19	FISCAL NOTE RECEIVED		
1/20	FISCAL NOTE PRINTED		
2/18	COMMITTEE REPORT—BILL PASSED		
2/19	2ND READING PASSED	26	23
2/20	3RD READING PASSED	27	23
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO APPROPRIATIONS		
2/23	FIRST READING		
3/17	COMMITTEE REPORT—BILL CONCURRED		
3/29	2ND READING CONCURRED	59	34
3/31	3RD READING CONCURRED	61	38
	RETURNED TO SENATE		
4/06	SIGNED BY PRESIDENT		
4/07	SIGNED BY SPEAKER		
4/13	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 360		
	EFFECTIVE DATE: 07/01/93		

SB 40 INTRODUCED BY KEATING
 CLOSE THE NURSING HOME AT THE STATE HOSPITAL AT GALEN
 BY REQUEST OF MONTANA STATE HOSPITAL COMMITTEE

12/23	INTRODUCED		
12/23	REFERRED TO FINANCE & CLAIMS		
1/04	FIRST READING		
1/14	FISCAL NOTE REQUESTED		
1/15	HEARING		
1/19	FISCAL NOTE RECEIVED		
1/20	FISCAL NOTE PRINTED		
2/18	COMMITTEE REPORT—BILL PASSED		
2/19	2ND READING PASSED	26	24

SENATE BILL NO. 37

INTRODUCED BY TOWE, S. RICE, FRANKLIN, RYE, VOGEL, WHALEN,
SIMON, MILLS, DRISCOLL, BACHINI, TUSS, COCCHIARELLA,
BARNHART, REAM, MCCAFFREE, WYATT, ELLIOTT, RUSSELL,
DOLEZAL, GALVIN, GERVAIS, HARPER

IN THE SENATE

DECEMBER 22, 1992	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 4, 1993	FIRST READING.
JANUARY 5, 1993	SPONSORS ADDED.
JANUARY 6, 1993	SPONSORS ADDED.
JANUARY 26, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 27, 1993	PRINTING REPORT. SECOND READING, DO PASS.
JANUARY 28, 1993	ENGROSSING REPORT. THIRD READING, PASSED. AYES, 44; NOES, 1. TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. FIRST READING.
MARCH 18, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 30, 1993	THIRD READING, CONCURRED IN. AYES, 98; NOES, 1.
MARCH 31, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 2, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 3, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 37

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF STALKING; PROVIDING FOR RESTRAINING ORDERS; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Stalking -- exemption -- penalty. (1) A person commits the offense of stalking if it is possible to communicate a request to the person to stop and if the person, after being asked to stop by the stalked person or someone acting at the stalked person's request, causes the stalked person substantial emotional distress or reasonable apprehension of bodily injury or death by:

(a) knowingly and repeatedly following the stalked person; or

(b) knowingly and repeatedly harassing, threatening, intimidating, alarming, or annoying the stalked person, in person or by phone, by mail, or by other action, device, or method.

(2) This section does not apply to constitutionally protected activity, legitimate law enforcement investigations, or organized labor activities.

(3) For the first offense, a person convicted of

stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed \$1,000, or both. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed \$10,000, or both. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(4) Upon presentation of credible evidence of violation of this section, an order may be granted restraining a person from engaging in the activity described in subsection (1).

(5) For purposes of this section, "emotional distress" means mental or emotional suffering or irritation caused by fear, worry, anxiety, nervousness, shock, anger, or insomnia.

NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, and the provisions of Title 45 apply to [section 1].

NEW SECTION. Section 3. Effective date. [This act] is effective 30 days after passage and approval.

-End-
-2-

SB37
INTRODUCED BILL

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0037, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating the offense of stalking.

ASSUMPTIONS:

1. The bill may increase the number of court cases and imprisonments in county jails and the caseload of county attorneys. The potential fiscal impact is unknown and not subject to reasonable estimate.
2. The bill may increase the number of sentences made to the state prison. The potential fiscal impact is unknown and not subject to reasonable estimate.

FISCAL IMPACT:

Unknown.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The bill may increase the caseload of county attorneys, the number of district court cases, and the number of imprisonments in county jails.

Dave Lewis 1-9-93
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Thomas E. Towe 1/12/93
SENATOR TOM TOWE, PRIMARY SPONSOR DATE

Fiscal Note for SB0037, as introduced

CB 37

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Sen. Bill Yellowtail, on January 18, 1993, at
10:07 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Harp, Sen. Blaylock

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 37
Executive Action: NONE

HEARING ON SB 37

Opening Statement by Sponsor:

Senator Towe, District 46, stated that one third of all women that have been murdered in this country were killed by their husbands and boyfriends and 90% of them were stalked before they were murdered. To stalk, to follow, harass, or intimidate, is not an offense under present law. SB 37 is a sensitive matter concerning constitutional rights. SB 37 requires five separate elements. In order to stalk under SB 37 you first must follow, or harass, threaten, intimidate, alarm or annoy. Each must be done knowingly and repeatedly and cause substantial emotional distress or reasonable apprehension of bodily injury or death in the victim. The offender must cease after being asked to stop.

Those who have been convicted of stalking would be subject to one year in jail or a \$1000 fine, a misdemeanor. A second offense would increase to a \$10,000 fine, 5 years maximum in jail, or both, making it a felony. If a person commits an offense after there has been a restraining order served, it would be a felony and subjected to a five year sentence, \$10,000 fine, or both. The perpetrators may be sentenced to pay all medical, counseling and other cost incurred on behalf of the victim as a result of the offense. SB 37 does not define the word harass or require a credible threat. SB 37 does not provide for an enhanced bail, an absence of bail, or a warrantless arrest. SB 37 exempts any constitutional activity, legitimate law enforcement investigation or any organized labor activity. SB 37 does not cover the areas of private investigators, licensed investigators, investigative journalist, workers compensation fund, or right to life associations. SB 37 deals with the concern of people who are harassed and feel threatened by someone who gets a charge out of following someone else. (Exhibit #1, Exhibit #2, Exhibit #3.)

Proponents' Testimony:

Representative Randy Vogel, District 86, talked about the frustration that he feels as a police officer, the inability to act when these stalking instances occur. Stalkers are generally known to the victim or have been identified. Currently there is no law that says you can not watch or follow someone, so nothing can be done to stop these people. Rep. Vogel stated that government should do something to protect these victims and pass SB 37.

Doreen Papich, told the Committee about a pedophile who was stalking her daughter during the last nine months. Ms. Papich said there was no protection for her daughter. Ms. Papich further stated that this matter has affected not only her daughter, but also her family. Ms. Papich urges support to pass SB 37.

Stacy Papich, Doreen Papich's nine year old daughter, told the Committee about the person who was stalking her.

Ruth Hill, Southside Task Force, told the Committee of her ordeal of being stalked after winning a civil suit.

Rodney Garcia, Chairman of Southside Task Force in Billings, read from prepared testimony. (Exhibit #4) Petitions in support of SB 37. (Exhibit #5)

Jerri Tate, Southside Task Force, urges the Committee to pass SB 37.

Kelly Vollrath, supports SB 37.

David Colton, South Side Task Force, stated he would like SB 37 to pass as soon as possible.

Susanne Hall read from prepared testimony. (Exhibit #6)

Senator Franklin, District 17, stated that stalking is not an isolated crime or a situation that only affects a few people. Senator Franklin asked the Committee to consider the extensive nature of this activity and the frustration of both the victims and law enforcement's limitations to respond appropriately. Senator Franklin asked the Committee to look at the proposed amendment and to pass SB 37.

Janet Thompson, resident of Red Lodge, told the Committee about the man stalking her. (Exhibit #7, Exhibit #8, Exhibit #9)

Jim Smith, Montana Psychological Association, told the Committee that the people who stalk are deeply disturbed individuals and the people to whom this is done suffer severe and long lasting emotional trauma that often times takes psychological counseling. (Exhibit #10)

John Conner, Assistant Attorney General, Montana County Attorneys Association, told the Committee about problems in SB 37. Mr. Conner feels it is not appropriate to require the stalked person to communicate to the stalking person to discontinue that behavior. Mr. Conner said the language was not defined if the communication is to be verbal, physical, or emotional. Mr. Conner stated he would like to work with the Committee on amendments for SB 37 so prosecutors will not have a problem enforcing the law.

Tim Shanks, Montana Police Protective Association, a police officer from Great Falls, spoke in support of SB 37 but stated there are some problems which need to be amended. Mr. Shanks said there is a need for an antistalking law and urges support for SB 37 in the amended form. Mr. Shanks read a letter from the Victim-Witness Assistance Services. (Exhibit #11)

Martin Timman, President of Montana Private Investigators Association and Security Operators Association, told the Committee that they support SB 37. Mr. Timman requested changes be made in the exemption portion of SB 37. This would cleanup certain cases in order to expedite the prosecution of individuals that are involved stalking.

Larry Nordell read from prepared testimony. (Exhibit #12)

Kathy Seacat read from prepared testimony. (Exhibit #13)

Joe McCracken, Superintendent of Lockwood Schools, told about an employee who was stalked and the effects on the employee. Mr. McCracken supports the passage of SB 37.

Loren Frazier, Executive Director of School Administrations of Montana, supports SB 37.

Amy Pfeiffer, Chair of Womens Law Section of the State Bar of Montana, supports SB 37, but has concerns about the bill. Ms. Fifer asked that the section regarding the victim having to ask the offender to stop the activity to be deleted. Ms. Fifer also asked that an amendment be made in the Marriage and Dissolution Code to include stalking as a reason to get a protection order. The third proposed amendment provides that a person who is accused of stalking would be required to see a judge to have bail set. Ms. Fifer told the Committee that Senator Franklin has the proposed amendments.

Diane Sands, Executive Director of Montanas Womens Lobby, stands in support of SB 37 and the proposed amendments.

Bergetta Hubbard told the Committee, on behalf of her friend Tracy who took two bullets to the chest and one to the head, that she believes a stalking law would have saved Tracy's life.

Arlette Randash, Montana Right to Life, urges consideration of amendment that would exempt pro-life activities under SB 37. Pro-life activity may be targeted because of the vague wording of SB 37. If SB 37 were successfully misapplied against a pro-life picketer that person may be subjected to a fine up to \$10,000 or 5 yrs in prison. The Montana Right to Life organization is not opposed to SB 37, but urges the consideration on an amendment to exempt pro-life activities.

Representative Tim Whalen, strongly urges the Committee to pass SB 37, including an amendment to exempt pro-life activities.

Bill Fleiner, Montana Sheriffs and Peace Officers Association, supports SB 37.

Representative Rice, District 36, supports SB 37.

Senator Forester, supports SB 37.

Opponents' Testimony:

Riley Johnson, Montana Broadcasters Association, supports the concept of SB 37. The concern is that the news media is not included in the exemptions. Mr. Riley submitted an amendment to address the news media. (Exhibit #14)

Charles Walk, Executive Director of the Montana Newspaper Association, opposes SB 37 as drafted and supports the amendment covering news gathering activities.

Questions From Committee Members and Responses:

Senator Crippen asked Mr. Conner about the constitutional provisions. Mr. Conner replied that it is not necessary to articulate general exemptions in SB 37. If a defendant felt their constitutionally protected activities were being infringed

on it would serve as a defense in a criminal case. When the language appears, when used in a general sense, it does cause some problems.

Senator Crippen asked Senator Towe why the phrase "constitutionally protected activity" was in SB 37. Senator Towe replied that when California enacted the first stalking law they put in an exemption for constitutionally protected activity and virtually every state has since. Constitutionally protected activities would alleviate the fears of some and avoid the need for making a list of exempted activities.

Senator Halligan asked Senator Towe about the provision to communicate to the stalker. Senator Towe said that provision gives us protection and if we take that provision out of SB 37 then we should define harass and address the question of a credible threat. Senator Towe feels that more is gained in protecting the victims who need protecting by leaving the provision in so SB 37 can be more liberal in other areas. This is a good provision because it is simple for the law enforcement person to go out and talk to the suspected stalker and say not to do that anymore.

Senator Halligan asked Senator Towe about the definition of substantial emotional distress. Senator Towe replied that substantial emotional distress is used in other states' statutes, but if the Committee wanted to, they could define it.

Senator Halligan commented that the bail provision in SB 37 needs to be looked at so we do not allow the perpetrator to post bail and get out. Senator Halligan suggested a notice provision to the victim when the person has posted bail. The temporary restraining order statutes need to be expanded to allow victims of stalkers be included as to those that can get a restraining order. Senator Halligan suggested a committee bill to deal with these issues. Senator Towe agreed with the bail provision, but didn't feel we needed to go beyond the family law section and reproduce the structure for restraining orders.

Senator Doherty asked Senator Towe whether it would be a crime if there was only one instance of stalking. Senator Towe said that was correct.

Senator Doherty asked about communication. Senator Towe said that anyone can communicate to the perpetrator to tell them to stop. The type of communication could be clarified in SB 37 if there is a need. Senator Towe feels there is merit in keeping the communication provision in SB 37.

Senator Doherty asked Mr. Conner about proof problems in communication to the perpetrator. Mr. Conner said that there would be problems unless there is testimony from a law enforcement officer that a communication to the perpetrator took place.

Senator Doherty asked Mr. Conner about the constitutional effects of listing specific exemptions to the bar against stalking. Mr. Conner said if specific exceptions were listed the argument would be that only those activities that were listed would be allowed; unlisted activities would thus be unlawful, even if they were otherwise constitutionally protected. Mr. Conner stated that it would be best for SB 37 to cover stalking only.

Senator Rye asked Mr. Walk if SB 37 would affect the media staking out someone's yard. Mr. Walk replied that it would.

Senator Grosfield asked Senator Towe about page one where it reads, "if it is impossible to communicate." Senator Towe said page one implies that if there was a situation where it is impossible to communicate it would create an exception. Senator Towe feels the Committee should work on that language.

Senator Grosfield asked Senator Towe about the effective date for SB 37. Senator Towe said he was not sure why the effective date for SB 37 is not effective immediately, but perhaps to allow law enforcement time to learn about SB 37.

Senator Franklin said she would like to work with Senator Halligan and Senator Towe on amendments.

Senator Halligan asked Mr. Conner about the warrantless arrest. Mr. Conner replied that under the law now, you have the right to make a warrantless arrest if there is probable cause to believe that an offense is being committed and circumstances require an arrest to be made.

Closing by Sponsor:

Senator Towe said the hearing has shown a good deal of controversy, but feels that everyone supports the idea and concept of SB 37. Senator Towe said the Committee will have to work on what exemptions should be allowed and the language to preserve the concept of a warning to make it easier to prosecute the offense of stalking. SB 37 does not want to prosecute the person who is unintentionally doing something that someone else views as harassment, but wants to prosecute the one who persists in stalking another individual. Senator Towe would like to see SB 37 passed and will help with any amendments.

SENATE JUDICIARY COMMITTEE

January 18, 1993

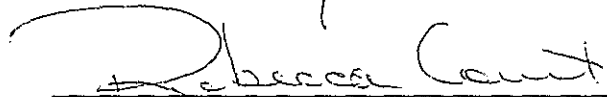
Page 7 of 7

ADJOURNMENT

Adjournment: 11:58 a.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

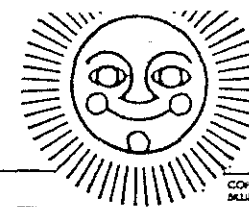
ROLL CALL

SENATE COMMITTEE Judiciary DATE 1-18-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp			X
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock			X
Senator Rye	X		

FC8

Attach to each day's minutes



MAGAZINE



Christopher Columbus is the focus of much debate this year.

Columbus' legacy: The great debate

As 500th anniversary of Christopher Columbus' voyage approaches, people of all races and ages are reflecting on what has happened in "The New World."

— MAGAZINE/1E

BUSINESS

Lodging industry grows in Billings

With three hotels recently completed or under construction, the lodging industry is posting its biggest growth in recent years. The expansion bucks the national trend in which lodging has been hurt by the recession.

— BUSINESS/1P

Mother fights stalker's terror

She leads crusade for anti-stalking law

By RITA MUNZENRIDER
Of the Gazette Staff

FOR MONTHS, a man has stalked Doreen Pabich's 10-year-old daughter, Stacey, as she walks home from her South Billings school. But the law says he's done nothing wrong.

Pabich wants to change that. After learning that police officers' hands are tied, Pabich has turned to local legislators.

The Billings mother's story sparked the interest of several Billings lawmakers. Sen. Tom Towe, D-Billings, has asked the Montana Legislative Council to draft a bill for the upcoming session that would make it a crime to stalk or harass another person. Pabich has dubbed the measure "Stacey's bill."

"I think it is needed," Towe says. "The example given by Doreen certainly illustrates the need for it. That's why I agreed to get the bill drafted."

In the process, Pabich wants to make other parents and children aware that there is a problem with stalkers in Billings.

As recently as Thursday morning, Pabich saw the man in her neighborhood near Garfield School. Police officers, who have done what they can to help Pabich, say they've had other complaints about the same man.

Pabich emphasizes that her daughter is not the only victim. Other parents have told her of individuals stalking their children in Billings.

It is unknown how widespread the stalking problem is, partly because it has never been a crime. But Billings Police Patrolman Rusty Wilson says officers are aware of several individuals who stalk children and women.

(More on Stalker, Page 15A)



Doreen Pabich is trying to get an anti-stalking law passed for her daughter Stacey.

Gazette photo by Larry Mayer

Other states have passed laws to foil stalkers

California passed the first anti-stalking law in 1990, making it a crime to repeatedly follow or harass someone with a "credible threat" to cause fear of bodily harm.

Now Sen. Tom Towe has asked the Montana Legislative Council to draft a bill patterned after the California law, borrowing penalties from Arizona's statute. The local lawmaker wants

Besides California, at least 20 other states now have anti-stalking laws that are aimed at halting patterns of threats and harassment that often precede violent acts, such as assault, rape, child molestation and murder.

Stalking bills also are pending in other states and before the U.S. Congress.

While most state's laws are misdemeanors carrying penal-

The South Side Neighborhood Task Force has voted to support the proposed legislation for Montana. The organization invites all Billings senators and representatives to its regular meeting on Nov. 19 to discuss the measure.

Meanwhile, the task force also plans upcoming fund-raisers to help transport parents and other members of the public to

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Continued story

Stalker

From Page One

"Kids are getting watched every day," an angry Pabich says. "There has to be more protection out there for kids."

Pabich said her family first noticed the stranger three weeks before school ended last spring. Since then, she has learned that the man lives across town, but regularly drives to the South Side to watch and follow her daughter. He's frequently sat in his car and waited for hours to see the youngster, and has even driven down the wrong side of the street to follow her on her bicycle.

Immediately after noticing the stranger last spring, Pabich began contacting local authorities for help. She learned that the law is woefully inadequate for her problem. She tried to obtain a restraining order, but learned that she couldn't because the man wasn't a relative.

Frustrated officers have few laws to work with in such situations, according to Wilson. He says he favors the idea of enacting an anti-stalking law because "we officers could then do something."

"If he goes on private property, there's trespass laws, but on the open street, we're sort of limited," Wilson says.

The officer also said the loitering statute gives law enforcement some leeway, but only if a person is caught sitting in the same place for long periods of time. The man Pabich says is stalking her daughter has been charged with loitering, a misdemeanor, and awaits a non-jury trial in City Court Dec. 17.

Police have talked to the man and warned him to stay away from the Pabiches, but the harassment persists, Pabich says. He also has been undaunted by warnings from her family.

"The guy feels no threat," Pabich says. "What law is he breaking? There is no law."

Pabich says she's tired of the disruption in her life and the lives of her children.

"He has stopped our lives," an outspoken Pabich declares. "I'm afraid to leave home. I have to watch my house all the time. I have to watch my daughter all the time. He's damn dangerous, and I know that."

Stacee, whom Pabich describes as a bright, loving and smiling youngster, is held prisoner in her own neighborhood. Her family won't leave her alone for a moment for fear that the man will harm her physically. Already he has caused Stacee frequent nightmares that jolt her awake in the night, leaving her trembling in cold sweats, her mother says.

On the advice of a Yellowstone County prosecutor, Pabich turned to Montana Legal Services, where Deborah Anspach got her copies of anti-stalking statutes enacted in other states.

From there, Pabich set out on her own to get a similar law passed in Montana. She began contacting local legislators and enlisted support for her cause from Rod Garcia and the South Side Neighborhood Task Force, which is funding a petition drive to gain additional backing.

Armed with the petitions seeking public support for the anti-stalking measure, Pabich has visited schools and gone door-to-door at South Billings housing units. She was alarmed to find that other mothers know of other people who make a habit of stalking their children.

Pabich says she wants to increase public awareness of the problem and convince other people to join in her efforts. "We need people to help take petitions around the city," Pabich says.

The 37-year-old mother says she won't run out of steam until an anti-stalking law is passed.

"The rage is getting pretty bad with me," she says. "If I don't put full force into doing this, I think I could kill him."

But Pabich stresses that she can't get the law passed without the public's help.

"I'm tired of doing this every day," the mother says. "I can't rest. I can't let this die between here and January. What other choice do I have to protect my daughter?"

Local case spurs consideration of anti-stalking law

Suspect accused of new incident

By MICHAEL W. BABCOCK
Tribune Staff Writer

A Great Falls man convicted last year of assaulting a school girl by exposing himself to her has been jailed on charges connected with a new incident involving the same girl.

The parents of that girl and another who claims she was victimized by the man have convinced Great Falls legislators Rep. Sheila Rice and Sen. Eve Franklin to introduce an anti-stalking bill in the 1993 Legislature.

Charles Ferrill Patton, 28, was arrested Sunday afternoon at 4709 Diana Drive, the home of his par-

Local legislators assess the problem / 6A
What to do if you think you're being stalked / 6A

ents, after the 12-year-old girl he assaulted 18 months ago complained that he was following her again.

Police said Patton was driving in his car, and the girl was on her bicycle when the incident occurred Sunday at 3rd Avenue North and 27th Street.

They confirmed the girl was the same as the one Patton assaulted in 1991.

Patton, who gave police a Helena address and told them he worked at a convenience store there, is charged with assault, driving while license is suspended and criminal possession of marijuana.

On Tuesday, he pleaded guilty in Court to the driving and drug charges but pleaded innocent to assault. Each of the charges is a misdemeanor and is punishable by up to 180 days in jail and a fine of \$515. Judge Nancy Luth sentenced Patton to seven days in jail and fined him \$315 and ordered him taken immediately to jail.

Patton's bail had been set at \$115, Assistant City Attorney Randy



Tribune Photo by Wayne Arns

Charles Ferrill Patton appears in Great Falls City Court Tuesday.

Winner moved to increase that to \$10,000 and Luth scheduled a hearing on that for Friday at 10:30 a.m.

Last year Patton was convicted of assault and indecent exposure and was sentenced to six months in the Cascade County Jail. Luth ordered Patton released a month early to attend sex offender treatment sessions at a clinic in Helena.

At that hearing Luth asked Patton if he felt he needed treatment and he replied, "Yes, I do."

But Tuesday, Winner said Patton had dropped out of the classes one week after the court's jurisdiction over him ended.

Patton was convicted in Everett, Wash., in 1989 on three counts of lewd conduct. According to Linda Bond, administrator of the Everett Municipal Court, there is an outstanding warrant against Patton for unlawful use of weapons to intimidate another.

Great Falls Police Officer Keith Kercher explained that an assault charge can be filed when a victim is harmed through fear.

"If the victim has reasonable apprehension that (she) could possibly be injured, that is enough for an assault even if there is no contact," Kercher said.

SENATE JUDICIARY
FORUM NO. 2
DATE 1-18-93
FILE NO. SB31

SOUTH SIDE NEIGHBORHOOD TASK FORCE

BILLINGS, MONTANA

Chairman
Rodney Garcia
259-7812

Vice Chairman
Stephen Bradley

SENATE JUDICIARY COMMITTEE

FILE NO. 4

DATE 1-18-93

FILE NO. SB37

January 18, 1993

To: Senate Judiciary Committee

From: South Side Task Force

Good morning, I am Rodney Garcia, Chairman of the South Side Task Force of the City of Billings.

The South Side Task Force which was formed in 1977, has worked as neighbors to rebuild the older part of the City of Billings. And I must say, we have been very successful. But lets get to the issue on hand. Anti-Stalker laws are being demanded nation wide. Montana now has the opportunity to join other states that have passed Anti-Stalker laws. California being the first to pass such a law. At prsent their are 29 states that have Anti-Stalker laws. With Montana becoming number thirty and North Dakota being thirty first. Presently California, reports to having 142 cases since 1990 with 37 cases still pending. As according to Lt. John Lane of the L.A.P.D. As of today, according to Federal Agent Greg Hoenchen, who is with the Federal Bureau of Investigation, their are no National Statistics. Congressman Joseph Kennedy is offering a bill to Congress. Which will help define and enforce states stalking laws, with Federal support. This bill will be before Congress in 1993. With the nation eyes on Montana. This August body, has a unique opporunity to show a leadership role in the support of this important bill before this committee. The South Side Task Force has taken a role in researching and drafting of this important bill before you. We support the bill as drafted. Although we understand their are groups which believe exemptions should be granted.

EXHIBIT 5, 1/18/93, SB 37, IS STORED AT THE HISTORICAL
SOCIETY AT 225 NORTH ROBERTS STREET, HELENA, MT 59620-1201.
THE PHONE NUMBER IS 444-2694.

by
Donna Hunzeker

January 1993

Volume 1, No. 4

Stalking Laws

States have enacted "stalking" laws to punish people who repeatedly watch, follow, harass or threaten someone with physical harm or death. Stalking laws criminalize these activities and give police recourse before an attack takes place.

*Restraining orders
inadequate*

States passing stalking laws determined there were inadequate provisions in existing law to protect stalking victims. In drafting and considering laws, legislatures in many states heard about victims who were brutally attacked and sometimes killed after enduring months and even years of threats and intimidation. Civil restraining or protective orders were nearly always in place but inadequate to deter the stalker from committing an act of violence. A third of female murder victims in 1990 were slain by husbands or boyfriends, according to the FBI.

*Twenty-nine states
with stalking laws*

Twenty-nine states now have stalking laws. California passed the first in 1990, creating (and coining) stalking as a crime. States enacting similar laws in 1992 were: Alabama, Colorado, Connecticut, Delaware, Florida, Hawaii, Kansas, Idaho, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Mississippi, Nebraska, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia and Wisconsin.

States with stalking measures pending on November 1, 1992, include Michigan, New Jersey and Pennsylvania. Other states, including Texas and Indiana, are preparing legislation to be introduced in 1993.

In other states, laws called something other than stalking have similar intent and purpose. Since 1987, Minnesota has had trespass and harassment laws on the books to apply to stalking situations that include "intent to harass, abuse or threaten." Minnesota law also has felony penalties for "terroristic threats" which can apply to stalking situations. Similarly in Maine, "terrorizing" is a Class D or Class C crime when threats of violence are made. Arizona created misdemeanor classifications of harassment last year.

*Stalking defined,
classified*

States typically have defined stalking as willful, malicious and repeated following and harassing of another person. Most stalking laws require that the perpetrator make a "credible threat of violence" against the victim, and in many states, it includes threats against the immediate family of the victim. Many provisions require that the victim have "reasonable fear of death or great bodily injury."

The 1990 California measure was enacted following the murders of five Orange County women the year before. In each case, the victim had been stalked and threatened and had a temporary restraining order against her assailant. The California measure was hailed by victims' and women's groups, and had support from the entertainment community because of cases in which celebrities are stalked and threatened by obsessed fans.

SENATE JUDICIARY

CHIEF CLERK 3

DATE 1-18-93

FILE NO. SB37

NATIONAL
CONFERENCE
OF STATE
LEGISLATURES

Executive Director, William T. Pound

Copyright National Conference
of State Legislatures

Denver Office: 1560 Broadway,
Suite 700
Denver, Colorado 80202
303.830.2200

Washington Office: 444 N. Capitol St., N.W.,
Suite 515
Washington, D.C. 20001
202.624.5400

Nineteen states have both misdemeanor and felony classifications of stalking with up to one year of jail typical for first offenses. Tougher penalties of up to three, five and even six years often apply to second or subsequent stalking offenses. Enhanced penalties also apply in 18 states where a stalker violates a protective order.

In some states with a felony stalking provision, bail can be established to increase the likelihood or duration of detention of alleged stalkers. Stalking laws in Iowa, Ohio and Illinois deal more specifically with the bail issue.

Constitutionality

Stalking laws in Florida and Ohio provide for warrantless arrest of alleged stalkers. Defense attorney groups and others have questioned the appropriateness, if not constitutionality, of warrantless arrest of stalkers, but other observers point out that such provisions in domestic violence laws have been found permissible.

A report last fall by the federal Congressional Research Service discussed whether some state stalking laws are too vague to be constitutional. In particular, that report questioned constitutionality of state laws in which following and harassing are considered stalking without also requiring credible threats of violence.

The U. S. Congress last year approved legislation under which the National Institute of Justice will work with states to monitor constitutionality and other outcomes of state stalking laws. Model provisions will be developed to help states adapt or enact laws.

STALKING CRIME CLASSIFICATIONS

Felony only:	Delaware, Florida, Illinois
Misdemeanor only:	Colorado, Kansas, Hawaii, Utah, South Carolina, West Virginia
Both Felony and Misdemeanor crimes:	California, Connecticut, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Mississippi, Nebraska, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Virginia, Washington, Wisconsin.

(Where both felony and misdemeanor classifications can apply, felony treatment is generally for when a protective order is violated and for second or subsequent stalking convictions.)

Selected References

Thomas, Kenneth B. *Anti-Stalking Statutes: Background and Constitutional Analysis*. Washington, D.C.: Congressional Research Service, Library of Congress, September 26, 1992.

Resnick, Rosalind. "States Enact 'Stalking' Laws." *The National Law Journal* (May 11, 1992): 3 and 27.

Contacts for Further Information

Donna Hunzeker
NCSL
(303) 830-2200

Testimony for anti-stalking bill January 18, 1993

My name is Suzanne Hall. I live in Bozeman and I am here to speak in support of the proposed anti-stalking bill. For the last ten months I have lived in fear of a man with whom I used to live. He threatened to kill me, he watched my comings and goings, he followed me, he chased me, and he made regular visits to my property. He terrorized me. Even though I obtained a restraining order and worked very closely with the police, the legal system did almost nothing to help ensure my safety. I'd like to tell you about some of the things that have happened to me and how the legal system responded.

During the time that Joe and I were ~~splitting up~~ ^{ending our relationship} in April of 1992 a number of very frightening things happened. He threatened to kill me by holding a knife to my throat and ~~telling~~ ^{told} me that if I didn't change he would slit my throat. My cat disappeared, my car engine blew up, and he took all of the money in our savings account. He followed all of this by telling me that the coup de gras was still to come and that he would make it impossible for me to remain living in Bozeman.

I went to the police to tell them that I thought my safety was in danger. The police suggested that I obtain a restraining order against him. That same day I went to the courthouse and within a few hours had obtained a judge's approval for a restraining order to be served. I told the sherrif's department where they could find ~~him~~ ^{Joe}, but it took them 5 days to get around to serving him, during which time he wasn't even aware that I had filed any complaint, ^{nor was I yet protected by the order.}

The restraining order stated that Joe could not harm, bother, molest, disturb, follow, harrass, intimidate, telephone, or threaten me ^{in any way}. Violation of the order would be considered a criminal offense. The wording souned good and in my naivety I assumed that once the restraining order had been served, my trouble with Joe would be over. I have since learned that this is rarely the case with restraining orders, ^{both because of the disregard for the order after it is served by those who use the order served to them — and because of weak interpretation of the orders by law enforcement officials.} Over the next seven months Joe violated the terms of the restraining order again and again, very often in terrifying ways. The BPD

became very supportive of me as the weeks and months went past and Joe continued doing what he had been ordered to stop ~~doing~~. The police always responded to my calls promptly and with sincere concern but in essence they acted like a secretarial service for me, logging in incidents and complaints but doing nothing more for me. Under the city's interpretation of the restraining order they were unable to do anything to protect me from Joe.

I can't count the number of times that I heard a heartfelt "I'm so sorry that this is happening to you. I wish we could do something for you." But the police had their hands tied. As the restraining order was interpreted and used by the city of Bozeman the police had to log in each complaint of a violation, make a written report to the city attorney, who in turn had to make a written request to the city judge. (This can be an incredibly slow process. In one instance it took upwards of two weeks, even with persistent calls to the city attorney's office from myself and my personal attorney.) It is then up to the judge's discretion (getting the story third hand at this point) whether an arrest warrant is justified. Unlike many other crimes,

Under the city's interpretation of the restraining order the only exception to this (~~in practice at least~~) is if Joe were to physically injure me. The restraining order was established to protect me from someone who a judge had deemed to be a serious potential threat to my safety and welfare, but getting Joe arrested for a violation of the order seemed to take forever in the few cases that it did happen, but in most cases ~~never happened at all~~.

I'd like to share with you some of the things that I have had to live with this past year, ~~that~~ ^{that Joe should have been held} ~~responsible for~~ under the restraining order, and that with a strong anti-stalking law ~~that~~ I know he would have been in deep trouble for.

Over the spring and summer a pattern developed. Every time I would see Joe (for example just passing in our cars on the street), something creepy would happen within the next few hours. Usually it amounted to something being stolen from my yard or a crash in the night, which usually turned out to be porch furniture being turned over. On one occasion I had a stink bomb thrown in a window in the middle of the night. Another time I came home ~~from a walk away~~ to find that all of my flower beds around my house had been doused with gasoline. On each occasion the police took a report, but did nothing to Joe. They were afraid that since there was

for the city attorney to get around to even looking at a complaint

a suspect is simply identified and arrested - the process for a restraining order is a bureaucratic mess.
I was told by the attorney
even calling the police seemed to be a waste of time

me, hearing

no hard evidence linking these things to Joe, their approaching him or interrogating him could be viewed by Joe as harrassment, something they didn't want to get charged with.

Joe also made it a habit to sit in his car near my house, drive up and down the dead end street that I live on, and watch me as I went about my business downtown. I never went anywhere without looking out for him. I jumped every time I saw a car that looked like his and ~~pretty well came unglued~~ every time ~~when~~ it was him. I kept my house and car doors locked at all times. I stopped letting my cat go outside. I wouldn't go to public places with my friends for fear that he would show up. I basically stopped living my life.

with my sister - just to be out from under his watchful eye - but then I'd worry that some thing would happen to my house while I was gone.

Over a period of months I received literally hundreds of hangup phone calls. This began immediately after Joe moved out. They came at all hours of the day and night. I had my phone number changed, unlisted and was very careful about who I gave it to, but somehow he got ahold of it almost immediately and the calls continued. The city attorney told me that all I needed was proof that at least three of these calls were coming from Joe's phone and they could prosecute on two counts, violation of the restraining order and violation of the privacy in communications act. I went through the difficult process of getting US West to put a tap on my phone and then for a three week period had to log ~~and report~~ all suspicious calls. During this time I reported about 40 calls. Most of the calls turned out to be coming from payphones on the MSU campus where Joe is a student and from other payphones around town, but we did get 4 calls coming from his phone. This was one more than we needed to prosecute. The police made the necessary report to the city attorney and that's where it ended. The city attorney ~~said~~ ^{changed her tone and said} that she didn't think we had enough for a case. The one thing that she did do was to write Joe a letter threatening him, letting him know that she had evidence against him and that she would prosecute him on those charges if he did anything else. We all thought that this would be a great deterrant to further activity but we were wrong. The letter didn't seem to phase him as a week later he approached me at a bar and tried to talk to me, then when I left the bar he followed me across town. When this happened I was sure the city would have him arrested ^{on the telephone charges}. ~~Again - nothing happened.~~ Because I was in such fear of him and his potentially violent reactions to things I have been afraid to date for most of this last year. I was afraid of the violent ~~reactions~~ ^{other men} that might occur if he saw me with a male friend. On the first date I did have (4 1/2 months

after I had split up with Joe), Joe saw and approached me. When I ignored his demands for me to tell him the name of the man I was with he became enraged and yelled obscenities at me. When I arrived home that night I found that some belongings had been stolen from my porch and that my yard had been doused with gasoline ^{once} again. I made a report to the police and feeling certain that I wasn't safe staying at my home alone, I went to spend the night at a girlfriend's house. When I returned in the morning I saw that he had returned sometime before dawn, as more things were missing from my yard.

After this incident the police were so fed up and frustrated that they did call him in for questioning (though they felt that they still didn't have the evidence to legally interrogate him) The police did their best to frighten and threaten him, but their talk didn't work. He went right back to his tricks.

On another occasion when I had a date, Joe followed us into a bar and chose to sit at a table right behind us. When we got up to leave he followed us into the parking lot. I called the police and requested that they ask the city attorney to request an arrest warrant. Nothing was done *by the city attorney or the judge.*

Because the system has been so ineffective in guarding my safety and in keeping Joe away from me, I have had to hire both a private investigator and a lawyer. This has amounted to quite an expense for me. An expense that most of us cannot afford.

watch my house during times that I felt Joe was the most dangerous.
An interesting note is that since Joe and I split up I have been

hearing stories of other women who have also had a terrible time with him. None of them, however were brave enough to warn me about him for fear that he would begin terrorizing them again. There is an incredibly consistent and frightening pattern from woman to woman. Two of the women never even dated Joe, but because they thwarted his advances he began harrassing them. Both of them were frightened to the point that they bought guns and kept them loaded. A third woman actually fled the state to get away from him, and she has never let him find out where she is.

been very careful to

I have also been hearing through the grapevine that Joe has gone out of his way to get close to people who know male friends of mine in order to get information about ~~my~~ relationships with ~~them~~ *me.* And he

EXHIBIT 6

1-18-93

has been going as far as to ask people who he doesn't even know, and who hardly know me - if they know anything about my sex life.

Finally, ^{to my relief,} ~~in the last few months~~ ^{in the last few months} Joe has been arrested twice. The first time was for chasing a friend and myself across town in his car. ~~We were scared the daylight out of us.~~ ^{we were petrified when it was happen} And it only let up when he saw that we were driving toward the police station. The second time was for approaching and following me in the grocery store, and then prohibiting me from leaving when I finally left my shopping ^{cart} and tried to go to my car. He has been charged with 4 counts of violation of the restraining order. He has plead not guilty to all charges, has requested a jury trial, and has hired a lawyer to represent him. We will probably see a court date in the next month or so and I look forward to it with ^{a great amount of} ~~not~~ fear. Two of the women who have had similar problems with Joe have made sworn statements that will be read and used in sentencing if he is convicted. In addition to my own safety I am now nervous for the safety of these two women. It was 10 months ago that this all started, but I still keep a can of mace beside my bed. These two other women think I'm crazy not to have a gun and have warned me that ^{I'm told that if Joe is convicted he'll probably} ~~my troubles with him are not~~ ^{serve a maximum of a week or two in jail and}

The bottom line is that I am petrified of this man. ^{and I know that I wouldn't have made it as far as my safety without the incredible support of my family.} He has watched me, followed me, harrassed me, intimidated me, and he has chased me. The restraining order has done nothing to keep him away. ^{rough if I'm belittled} Having the police haul him in, interrogate him, and remind him of the restraining order, didn't work. Receiving a letter from the City Prosecutor telling him that the city has evidence ~~that he was making~~ ^{him harrassing phone calls to me,} that this was serious and punishable, and that he would be prosecuted if the pattern continued has had no effect on the man's behavior.

I want to know when I ^{can look forward to} ~~will finally~~ feel safe living in Bozeman? I have really felt all along that he was that one being protected and that he has been allowed more rights than me. I am so sick of hearing the police say that they have to be careful not to harrass him. I want to see that man get a taste of his own medicine.

The alst thing that I want to leave you with is ^{to share} a word of advice that I got from two different police officers. Thees officers were two people who had come to be very concerned about me and who I had come to appreciate and respect. Separate of one another these two officers told me that based ~~on the kind of mentality I had,~~ and based on the currnt legal system, there was only one thing that could

Joe's behavior

effectively
be done to force Joe into leaving me alone. They suggested that I go outside the legal system, take the law into my own hands and find someone or a group of someones, to beat the daylights out of Joe and give him the scare of his life. I think that's a pretty heavy statement about the lack of power ~~in the~~ system when it comes to protecting its citizens.

under the
current system

Those are the sentiments
of two concerned and
frustrated cops.

I can't imagine that this bill won't pass - what
concerns me is how well it will be enforced to
protect people like the Pabich family and myself.
I hope it works.

EXHIBIT 6
1-15-93
SB 37

EXHIBIT 7, 1/18/93, SB 37, IS AN AUDIO CASSETTE. IT IS
STORED AT THE HISTORICAL SOCIETY AT 225 NORTH ROBERTS
STREET, HELENA, MT 59620-1201. THE PHONE NUMBER IS
444-2694.

Stalking Legislation Sweeps the Nation

Violent, harassing and threatening behaviors toward innocent citizens have always been a serious problem particularly for victims of domestic violence and sexual abuse. Yet it has taken a series of high profile cases during the last few years — often involving celebrity victims — to focus public attention on stalking as a serious crime problem.

While laws such as protective injunctions and stay-away orders do exist to protect victims from violent pursuers, law enforcement officers may not intervene until such orders have been violated. By then, it is usually too late to prevent the offenders from harming or even killing those whom such orders were designed to protect.

In recognition of the ineffectiveness of such orders and in response to a series of tragic crimes committed by perpetrators who stalked and harassed their victims before turning to violence, California passed the nation's first "stalking" law in 1990. In simple terms, the law makes it a crime to engage in a pattern of behavior that harasses and/or threatens other people. Its purposes are two-fold: to eliminate behaviors which disrupt normal life for the victim, and to prevent such behaviors from escalating into violence.

In July 1991, the Center included the concept of stalking laws in its *Crime Victims and Corrections* training and technical assistance project sponsored by the U.S. Department of Justice Office for Victims for Crime. Two months later, Center staff appeared on NBC's *The Today Show* and a *Closer Look with Faith Daniels* to emphasize the importance of stalker laws. In September 1992, Center staff joined journalist Ted Koppel on ABC's *Nightline* to defend the constitutionality of such legislation.

California's landmark legislation has led to an unprecedented deluge of "anti-stalking" legislation nationwide. To date, twenty-seven states have passed laws based on the California model this year alone.

In most states, stalking is defined as the "willful, malicious and repeated following or harassing of another person, and requires the existence of a credible threat of violence." Penalties for violation vary; however, most carry a penalty of one year in jail and/or a \$1000 fine.

Senator Bill Cohen (R-ME) has introduced legislation which charges the National Institute of Justice with developing a model stalking law which should pass constitutional muster. This model would then be made available to state legislators.

In Los Angeles, stalking laws have led to the creation of the four-member *Threat Management Division* of the Los Angeles Police Department. In the last year and a half, the Division has handled more than 150 stalking cases. In other states, law enforcement officials are already making arrests under these newly passed statutes.

The National Victim Center has acted as an information clearinghouse regarding stalking laws. By providing interested legislators with information and technical assistance, and heightening public awareness through the media, the Center has assisted many states in drafting and passing anti-stalking laws. The Center intends to keep abreast of all aspects of this significant and expedient legislative trend.

For additional information, please contact the Center's Director of Public Affairs, David Beatty, at (703) 276-2880.

States With Anti-Stalking Laws

- California
- Colorado
- Connecticut
- Delaware
- Florida
- Idaho
- Iowa
- Illinois
- Hawaii
- Kentucky
- Louisiana
- Massachusetts
- Mississippi
- Nebraska
- New York
- North Carolina
- Ohio
- Oklahoma
- South Carolina
- South Dakota
- Tennessee
- Utah
- Virginia
- Washington
- West Virginia
- Wisconsin

SENATE JUDICIARY

DATE REC. 7

1-18-93

Wood Brown
Gerbase, Jr.
rd F. Cebull
s B. Fulton
n J. Harman
Walker Ross
J. Russell
A. Dostal
iel W. Tolstedt
iel P. Heringer
W. Rogers
G. Gratton
thy A. Filz

BROWN
GERBASE CEBULL
FULTON HARMAN
ROSS P.C.
LAW FIRM, EST. 1911

315 North 24th Street
P.O. Drawer 849
Billings, Montana 59103-0849
406 248-2611
FAX 406 248-3128

August 15, 1991

Erwin Draper
Box 766
Red Lodge, MT 59068

RE: Janet Thompson

Dear Mr. Draper:

Enclosed you will find a check from Janet Thompson in the amount of \$50.00 as payment in full for your services in cleaning her yard. This payment is made pursuant to our agreement that this is payment in full, and that you will not attempt to further collect on the bill for \$200 which was previously provided to Ms. Thompson.

If you have any further questions, please advise.

Sincerely,



JOHN A. DOSTAL

JAD:jm
Enclosure
cc: Janet Thompson

1-18-93
SB 37

BROWN
GERBASE CEBULL
FULTON HARMAN
ROSS P.C.
LAW FIRM, EST. 1911

315 North 24th Street
P.O. Drawer 849
Billings, Montana 59103-0849
406 248-2611
FAX 406 248-3128

Rockwood Brown
C.J. Gerbase, Jr.
Richard F. Cebull
Angus B. Fulton
Steven J. Harman
John Walker Ross
John J. Russell
John A. Dostal
Michael W. Tolstedt
Michael P. Heringer
Guy W. Rogers
Scott G. Gratton
Timothy A. Filz

August 6, 1991

Irwin Draper
Box 766
Red Lodge, MT 59068

RE: Janet Thompson

Dear Mr. Draper:

Our offices represent Janet Thompson. She has requested that I notify you that she no longer wishes any personal contact with you whatsoever. You are to cease calling her, coming to her place of residence, or even attempting to talk to her in public places. If you do not cease your intrusions into her personal life, she will obtain a restraining order against you. Then, any violation of the restraining order will be a contempt of court punishable by a jail sentence and/or fine. Janet does not want to put either of you through the time and expense of such a proceeding. Only your future actions will determine whether it is necessary.

You have threatened to tell "everything" so that gossip can be spread about Janet. I will remind you that the dissemination of false information to others will subject you to a libel and slander lawsuit for damages by Janet.

You have sent a bill for yard work to Janet in the amount of \$200. Janet did not request your services. She only asked you to watch her house and to water her plants. There was no promise by her for payment of any kind. Although she owes you nothing, she may be willing to pay you something for your services, but not \$200.00.

If you have any questions regarding this letter, do not call Janet. Please call me.

Sincerely,


JOHN A. DOSTAL

1-18-93
SB 37

JAD:jm
cc: Janet Thompson

**COUNSELING & CONSULTATION
SERVICES**

P.O. BOX 21472
BILLINGS, MONTANA 59104

DATE 10
1-18-93
SB37

CHERYL L. SULLIVAN, M.S.
NORMAN S. HONEYMAN,
Ph.D.

(406) 252-3355

1/8/93

Dear Mr. Smith: Re Senate Bill #37

In response to our phone conversation - I have worked with female survivors of domestic abuse for the last 15 years here and in California.

I cannot count the times I have had a terrorized woman in my office who recounts an all too familiar story of a rampaging husband who has threatened to kill her after she has left a long term abusive relationship. This fear often keeps them in the abuse longer than they might have stayed. They recount numerous beatings, guns held to their heads and threats "if you leave me you'll be killed!!" or "the kids"

After they leave they and their children live in fear. He often sends them beatings and the kids, vandalizes her car, terrorizes her over and over. Her only recourse is to run and keep on running.

COUNSELING & CONSULTATION SERVICES

P.O. BOX 21472
BILLINGS, MONTANA 59104

II

CHERYL L. SULLIVAN, M.S.
NORMAN S. HONEYMAN,
Ph.D.

(406) 252-3355

or to defend herself. If she chooses
the latter she often ends up in prison.

I have no solutions to offer at these
times when they are the victims of
abscene phone calls and death threats and
daily harassment. Some of them are killed.
my wife, a counselor handled a case in
Reno, Nevada where after months of harass-
ment "he" hid in his ex-wife's car and
shot her in the head - she died, he's in
prison and the children's lives were
destroyed.

Please provide some measure of
safety for the women of Montana -

Please pass the Anti-Stalker
law - for us all

Sincerely,

Norm Honeyman (JHM)



VICTIM-WITNESS ASSISTANCE SERVICES

P.O. Box 5021, Great Falls, MT 59403 Ph. 727-5881 ext. 207

January 15, 1993

Senate Judiciary Committee
State Capital
Helena, MT 59620

RE: Anti-Stalking Legislation SB 37

Victim-Witness Assistance Services (V-WAS) supports the concept of anti-stalking legislation. We have been involved in a case where a juvenile was victimized in this manner and the trauma she is dealing with is very real. There SHOULD be a law to protect innocent citizens from this type of predatory behavior.

V-WAS has a concern with the draft of SB 37 as it stands. It seems much too vague and general to hold up in court. We know that the criminal justice system, with its mandate to protect the accused until proven guilty, often re-victimizes the victim in the process of prosecuting the offender. Passing a generalized statute that will be successfully challenged on appeal is not in the best interest of the victim.

Several states have already had experience with enacting legislation that passes court scrutiny. One source to contact regarding these successful statutes is David Beatty, National Victim Center's Director of Public Affairs, (703) 276-2880.

The whole mission of V-WAS can be capsulated in the phrase "restore and enhance the well-being of the crime victim." We know that is the intent of SB 37 and we applaud that intent. However, we cannot support the statute in its present form.

On behalf of V-WAS, sincerely,

Delnita Davis
Chair

SENATE JUDICIARY
FILE NO. 11
DATE 1-18-93
FILE NO. SB37

January 18, 1993
Senate Judiciary Committee
SB 37, "An act creating the offense of stalking"
Senator Tom Towe

Testimony of Dr. Lawrence P. Nordell
1953 Oro Fino Gulch
Helena, Montana 59601
443-4817

SENATE JUDICIARY
EXHIBIT NO. 12
DATE 1-18-93
FILE NO. SB37

My name is Larry Nordell. I am an economist with the Montana DNRC. My appearance here is on my own behalf, not that of DNRC, and I am testifying on my own time.

My interest in this issue comes because a member of my family has been a victim of stalking for most of the past year, and I am here to tell you that stalking also victimizes family and friends. Our lives have been disrupted by worry and anger and rage at our inability and the inability of the legal authorities to put a stop to the behavior. I had to make an emergency trip to Bozeman to accompany my sister-in-law when she entered her apartment after finally getting her ex-boyfriend to leave, not knowing what or who we would find there. My father-in-law has made several emergency trips from his home in Massachusetts to stay with his daughter to deter the threat and harassment. My brother-in-law came up from Utah to help her, and to talk to the Bozeman police to ask for help. My 9 year old son, who was also for a while the subject of this person's attention, goes into a state of panic if he thinks he recognizes the person in a crowd.

Last summer I started collecting stalking legislation from different states. At last count I was up to 26. The problem of stalking is not confined to Montana. An old friend of mine, Ellen Story, who was a freshman legislator in Massachusetts last year co-sponsored their stalking bill, and read into the record a list of 29 cases in the previous year of women who had been harassed and stalked and finally murdered by former husbands or boyfriends. The bill was supported by the Governor, Attorney General, leadership of both parties, police organizations and battered women's groups. My friend suggested that you call William Bulger, the President of the Massachusetts Senate; Charles Flaherty, Speaker of the House; Scott Harshbarger, Attorney General, or Governor William Weld, if you have any questions about how important they thought their stalking bill was. The Massachusetts bill passed unanimously. We can do the same.

This bill is a response to public outrage over a rising pattern of obsessive behavior. Stalking offenses result from obsessions: obsession with an individual, obsession for revenge. We have read countless newspaper articles of such events. Most often we read of rejected spouses or lovers who want revenge, and who make life a permanent terror for their target until the stalker either tires of it or finds a new victim or decides to take his victim's life. But obsession is not bound by emotional ties, as obsessions with

strangers are also a common story, whether it is with a celebrity, as in the well known case of David Letterman, or a child's face in the street, as in the case in ^{Great Falls} ~~Billings~~ that was one of the cases leading to this bill. What is common to these cases is the fear raised in the victim and the apparent inability of the law to do anything until someone is killed. Montana needs a way to stop these crimes before they escalate, to protect people from interference with their enjoyment of their lives. We need a law that will make a strong statement that obsessive stalking will not be tolerated and that the full force of law will come down on a violator.

Senator Towe's bill is a good start. It has a good defensible definition that does not depend on intent, and it provides a stiff penalty for first violation and a stiffer one for repeat violations and for violating a court order. I have looked at around 26 different states' stalking laws and would like to suggest some additions to Senator Towe's bill.

1. Definitions:

~~Delete: If it is possible to communicate a request to the person to stop and if the person after being asked to stop.~~

Reason: The person may be afraid to communicate with the stalker, or may not know who it is (eg phone harassment or anonymous tricks). Further according to the definition, if it is not possible to communicate then the offense doesn't exist.

Add: causes or uses another person to cause

Reason: An obsessive stalker may enlist friends or strangers to help in harassment, or may distribute the victim's telephone number with a suggestion to harass.

Additional sections for consideration that may have been included in other states' stalking legislation:

1. Denial of bail: Some states provide that a judge may deny bail if a stalker has violated an order to cease the harassment or to stay away from and not communicate with the victim. Montana should have this in our stalking law.

2. Warrantless arrest: Again, some states provide that a stalker may be arrested without a warrant if he or she is in violation of a judge's order to avoid communicating with or to stay away from the victim.

3. Rules of evidence at bail hearing: In conjunction with (1), if a stalker is in violation of a court order or if there is a repeated pattern of offense, a lesser standard of evidence may be appropriate at the bail hearing. In particular some states do not require the victim to be present to testify. The stalker's rights are maintained at the trial, but the victim is provided an

EXHIBIT 12
DATE 1-18-93
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additional protection against intimidation.

4. Notification of victim of change in stalker's status: If a stalker is released on bail, or released on parole or sent to a prerelease center or moved to another location, the victim of stalking should be required by the law to be notified by the authorities.

5. Previous violations count: A function of the law is to provide disincentive to obsessive stalking. If stalking is a violation of the law, a stalker should face a stiffer penalty for a second violation even if the first violation took place in another state or against a different victim.

6. Minimum sentences: The draft bill contains maximum sentences that are adequate, but should also contain minimum sentences. A stalker should not be able to get off by arguing that his behavior was justified by the victim's rejection.

7. Sentences to run consecutively: Repeated offenses should add to the time a stalker must serve, and sentences for repeated offenses should run consecutively, not concurrently.

8. Effective date: The bill should become effective upon signing. There are too many cases of stalking going on now to wait until July 1 to put the bill in force.

9. Additional deterrence: I have not come across this in any other state, but a possible additional deterrence might be available through seizure of assets. Allow a court to seize a stalker's car, house, bank accounts and he may come to realize the behavior is too costly to continue.

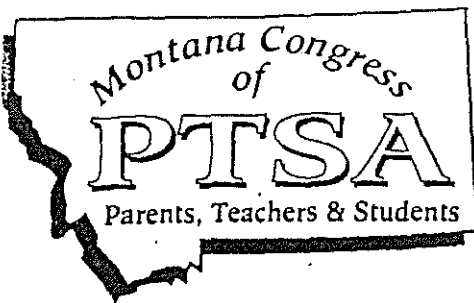
10. Caller I-D *Finally, we should*

10. Self-defense: ~~the bill should provide that a victim of stalking who is threatened with death or serious bodily injury may use force to defend themselves and the sanctity of their lives with at least the possibility they won't have to trade their lives to the state instead of the stalker. I suggest that if a victim of stalking uses force, even deadly force, to deter a stalker who has repeated and credibly threatened them then there should be a presumption of self-defense for their actions. Colorado's stalking bill contains a definition of credible threat that could be used in this context. It reads as follows:~~

(b) For the purposes of this subsection (4), "credible threat" means a threat that would cause a reasonable person to be in fear for the person's life or safety, and "repeatedly" means on more than one occasion. [C.R.S. 18-9-111(4)]

As parents of Suzanne Hall of Bozeman, a woman whose life has been ruled by a stalker for the better part of a year, we implore you to do all in your power to pass an effective bill to save her and others from further stalking and harassment.

Ann and Vernon Hall
10 Worcester Rd
Princeton Massachusetts 01541



SENATE JUDICIARY
SUBMIT NO. 13
DATE 1-18-93
FILE NO. SB37
Testimony S.B. 37
Senate Judiciary Committee

Chairman Yellowtail and Members of the Senate Judiciary Committee;

I am Kathy Seacat, Legislative Coordinator for the Montana Congress of Parents, Teachers and Students. We are commonly known as the Montana PTSA and we are the largest child advocacy organization within the state. The National PTA, our parent organization, is the largest child advocacy organization in the nation with 7 million members. The welfare and safety of children and youth is at the heart of all we do and advocate. One of our objects is to secure adequate laws for the care and protection of children and youth in our state and nation.

Today I am here on behalf of the 10,204 members I represent to address S.B. 37 and to ask you to support "creating the offense of stalking." The National Conference of State Legislatures in its January 1993 'Legisbrief' (Volume 1, No.4) on Stalking Laws states that twenty-nine other states have stalking laws. The NCSL also states that "typically states have defined stalking as willful, malicious and repeated following and harassing of another person. Most stalking laws require that the perpetrator make a 'credible threat of violence' against the victim, and in many states, it includes threats against the immediate family of the victim. In some states with a felony stalking provision, bail can be established to increase the likelihood or duration of detention of alleged stalkers."

'Newsweek' (Vol:120, Issue 2, Pg 60-62) in an article entitled "Murderous Obsession" states that "behind almost every state bill has been at least one local tragedy. The new laws aim at halting a pattern of threats and harassment that often precedes violent acts, from assault to rape, child molestation and murder. Stalking can involve celebrities, co-workers or complete strangers. Not all victims are female. Law enforcement officials admit there is very little they can do in the face of a persistent stalker. The new laws do give police one more weapon to employ against stalkers--and if they deter even a small percentage of crimes, that's better than none."

Our children are not immune from this menacing and growing phenomenon. PTA's across the state want action. Crystal Peterson, a ten year old, from Independence, Oregon, population 3500, was stalked for three years by a neighbor. In an article from 'Good Housekeeping' (November 1992) her parents were quoted to say "Fear moved into the family home, we kept the shades drawn, argued and kept the kids indoors and out of sight. The whole family became obsessed with his obsession."

Let's offer the children of Montana legal protection from stalkers. Please support the passage of S.B. 37 with the strongest legal penalties possible. Thank you for your time and attention.

Kathy Seacat
2710 Tizer Road
Helena, MT 59601
443-6637

PROPOSED AMENDMENT TO SB-37

Line 24

Following: "investigations,"

Insert: "news gathering activities"

END

SENATE JUDICIARY

EXHIBIT NO. 14

DATE 1-18-93

SB 37

DATE 1-18-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 37 Sen. Timmer

Name	Representing	Bill No.	Check One Support Oppose	
Ann Pfeifer	Women's Law Schol. Skt. Proj.	SB 37	☒ with ☐ and	
RILEY JOHNSON	MT. Broadcasters Assn	SB 77	☒ with ☐ and	
Ron Silvers	Center for Sexual Health Mental Health Services	SB 37	☒ with ☐ and	
Tim Shanks	MT Police Protective Assn	SB 37	☒ concept ☐ and	
Chico Elbert	MT Newspaper Assn	SB 37	☐ with ☐ and	☒ and
Stephen E. Bradley	Booth Side Truck Frame	SB 73	☒ with ☐ and	
Rep. Randy Vogel	HD 86		☒ with ☐ and	
Kelly Vollrath	self	SB 73	☒ with ☐ and	
Kathy Seacat	Montana Parents Teachers + Students	SB 37	☒ with ☐ and	
MARTIN TIMMERMAN	Pharm. Pharm. Association	37	☒ with ☐ and	
Suzanne Hall	self	37	☒ with ☐ and	
Larry Nordell	self	37	☒ with ☐ and	
Anthony Dupuis		37	☒ with ☐ and	
William	supp. with amendment Montana Right to Life	37	☒ with ☐ and	☒
Jim Smith	MT. Busch Assoc.	37	☒ with ☐ and	
Bill Fleiner	MT Sheriff & Peace Officers Assoc	37	☒ with ☐ and	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-18-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: _____

SB37 5 talking Sen. Tor Tor

Name	Representing	Bill No.	Check One Support Oppose
Diane SAVILE	MT Women Lbll	SB37	☒ Support ☐ Oppose
Kirk East	Southside Task Force	SB37	☒ Support ☐ Oppose
Janet Gate	Southside Task Force	SB37	☒ Support ☐ Oppose
John Connor	MT County Attys Assn	SB37	☒ Support ☐ Oppose
Stacey Pobich	Southside Task Force	SB37	☒ Support ☐ Oppose
Doreen Pacion	SS to SR Force	SB37	☒ Support ☐ Oppose
Johnny Garcia	Southside Task Force	SB37	☒ Support ☐ Oppose
Janet Thompson	Prid Cit - Red Lodge		
David Cotton	Southside Task Force	SB37	☒ Support ☐ Oppose
GARY FORRESTER	SD #49	SB37	☒ Support ☐ Oppose
JOE MCCracken	LOCKWOOD SCHOOLS	SB37	☒ Support ☐ Oppose
Loran FRAZIER	SAIM	SB37	☒ Support ☐ Oppose
Betsy Hall Nordell	self	SB37	☒ Support ☐ Oppose
Harold J Schmidt	self	SB37	☒ Support ☐ Oppose
Bergetta Hubbard	self	SB37	☒ Support ☐ Oppose
Rep Tim Whalen	self	SB37	☒ Support ☐ Oppose

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

the committee, is there support for amending the concept of seizure of the vehicle. Senator Franklin said she did not believe that addressed Senator Halligan's issue. Senator Franklin said there is really no structure or protocol in place to deal with seizure and may be more than the Department can respond to at this time.

Senator Towe said he would like to ask the Department and if they have some further things, we should know about. If there is no interest in adding this in, he would not want to take up the Committee and Department's time on it.

Senator Doherty said he would resist any effort to work on seizure because the committee went through that very thoroughly and worked out the best way to do it was to grab the plates.

Senator Yellowtail said in view of the outcome of the last bill that concept was dead on the table. He suggested that not be included in Senate Bill 153. He said with the subcommittee having that direction to begin with, Senator Doherty WITHDRAWS HIS MOTION TO AMEND for the present time and we will continue discussion on this bill.

EXECUTIVE ACTION ON SENATE BILL 37

Discussion: Senator Towe said there was a subcommittee to work on this composed of himself, Senator Franklin, Senator Halligan. They met with John Conner, Ms. Lane and Amy Pfifer and went over all of the suggestions. He said they had come up with good amendments and believed they had made a much better bill in the process.

Motion: Senator Towe MOVED TO AMEND SB 37. (Exhibit #5)

Discussion: Senator Towe explained the amendments. They proposed to eliminate all of the exclusions and exemptions. The problem with doing any exemptions and exclusions, even with constitutionally protected activity like legitimate law enforcement investigations, is that as soon as you include some, by negative implication, you exclude others, and that is not a good idea. He said the committee had also included a statement of intent and read part of it to the committee. The next major item was that they took out the first warning in lines 11, 12 and 13 and the subcommittee put in the words "knowingly" and "repeatedly" on page 1, line 18. He said all the other four elements are there, but the theory in taking out the warning was reinserted in a new subsection on page 2, lines 16 through 19. He said in some cases it may not be appropriate to give a warning, and you do not have to prove a warning in those cases.

Senator Towe said the next amendment was to take where they took out the words "alarming or annoying". He said they brought in the language from the DUI law in order to prove a prior conviction, so if someone had a prior conviction of stalking in

(Sen. Towle)

another state, that triggers the felony and the higher penalty. They then put in a temporary restraining order language that is presently in the family law section. They brought that in and added stalking to it and made it clear you do not have to be a family member to get a temporary restraining order. In section three there is a requirement that whenever a person is admitted bail, the prosecuting attorney or the Judge in the absence of the former, must notify the victim or the parent or guardian of the victim if the victim is a minor. They accepted the suggestion made in the committee hearing that the schedule of bail not be allowed to include stalking as one of the schedules of items for bails. There was one other amendment that the effective date should be on passage and approval, not 30 days later. He said the remainder of the amendments are just cleaning up language.

Senator Crippen asked about constitutionally protected rights. He said the constitutional aspect has been taken out of the body of the bill and has been put into the statement of intent. Ms. Lane said she believed it was a good change and this particular issue did come up in subcommittee and John Conner had particularly strong feelings on it. He believed that any right that is a constitutional right is going to be protected under common law and by the constitution. Ms. Lane said it occurred to her at the end of the testimony that it seemed the people who were coming in and asking to be put on the list of exemptions had good intentions, but the reality was that they were asking to be allowed to stalk. Mr. Conner said taking them out of the bill leaves them under the umbrella of protection under common law and their constitutional rights would be protected by the constitution. Mr. Conner's main concern was that if you start a laundry list, the principle of construction would be that if the Legislature specifically put three or four classes of people on the laundry list, anyone not included would therefore be excluded.

Senator Crippen said his concern is taking the constitutional activity off the bill itself and placing it in the statement of intent. Senator Crippen said you do not have statutory law, it goes under common law with the intent. Ms. Lane said he was correct. The umbrella protection in the constitution would be there whether a statement of intent was attached to the bill or not. She suggested if there were problems with the word "chill", perhaps a better word could be used.

Chair Yellowtail asked Senator Crippen if he would like to argue for a section of the bill that would express purpose and Senator Crippen said no, he understood that common law would protect constitutional rights, regardless of what was in the bill. He said he wanted to make sure privacy could be maintained in protected activities, as well as Worker's Compensation activity investigation and private law enforcement activity.

Senator Doherty asked about the statement of intent, specifically the sentence that restraining orders are often difficult to

obtain and are often inadequate to deter a stalker from committing an act of violence. He said this bill makes stalking an act of violence, and if we are going to make that punishable, we are talking about committing a further or additional act of violence. He was not sure if it is the intent of the Legislature to give law enforcement personnel recourse before an act takes place. If the appropriate thing to do is to not list in the body of the bill those specific constitutional rights which we are not attempting to infringe upon, why is it any less appropriate or inappropriate to list them in the statement of intent.

Senator Towe said as far as the restraining order is concerned, the subcommittee did feel it might be helpful to outline exactly what they had in mind in terms of when a restraining order would be available under the new amendment to the Family Law Code. It is the intent of the Legislature to criminalize and punish the activities of people who repeatedly watch, etc. As far as making it a violence crime, yes, it may be that we are making an additional crime, whether it was or was not a violent crime, is beside the point. "Following" can be a non-violent crime, but it can have emotional impact on the person who is stalked. He said for that reason, it can not be put into words of violence and non-violence because it may be a non-violent crime, but believed it should still be criminalized.

Senator Towe said the negative implication is eliminated if we put it in the statement of intent and that is not the case if it is put into the bill. He said he was concerned about a laundry list that could be in this bill before it goes through the process and becomes law. Senator Towe said as Ms. Lane pointed out, every exemption is a license to stalk and that is not what we intend here.

Senator Doherty said he was arguing against the laundry list. Senator Towe asked if he felt it should even be in the statement of intent and Senator Doherty said no. We are not attempting to "chill" constitutionally protected rights. He asked if we do not have a full exercise to the right to demonstrate, or the full right to assemble etc. By doing that, we are invoking evil that we are attempting to avoid.

Senator Towe said he assumed this language was added in the hope of placating some of the people who felt their right to demonstrate, assemble, picket and their freedom of speech might be impaired. He said he was concerned about this issue as well as the legitimate journalists who are concerned about this issue. He did believe it best to handle this amendment first. There is another proposal to add to the lawful activity some statement about investigations and journalists, and activities in collections of lawful debts. Now the banks and credit unions are concerned that their attempt to collect a debt will be considered harassment. Senator Towe pointed out that the laundry list could go on and on.

Senator Rye said it seemed the statement of intent takes care of that problem. He said it did a good job of eliminating the laundry list while still protecting rights of those basic constituencies. He said if he could bypass specific wording for journalists or right-to-lifers, Senator Towe had made an equal sacrifice in bypassing organized labor activities. We have all had to give a bit, and the statement of intent makes it clear what the Legislature wants to do. It is a good addition to the bill, and should be left as is. It touches on almost every concern placed by every individual who might have had possible objection to this bill.

Senator Grosfield told the Committee he like the bill and asked a couple of questions. His first was in regard to people who "repeatedly watch" over us, and he asked why we have "watch" in there. He said we are talking about intimidating behavior, following, threatening, harassing, purposefully, knowingly etc., and "watch" does not seem to be the right word.

Senator Towe responded by saying "watch" was the real basis of the offense that Dori Papich explained happened to her daughter Stacy. The guy sat in his car within view of the playground and watched them all day long. That was all he did, then he would follow them home and watch them going home and also in their house. He told Senator Grosfield his point may be well taken that "following" is more offensive than "watching". Watching is a concern these folks have had and perhaps it should be taken out of the statement of intent. He said it is not in the bill itself, and perhaps it should be out of the statement of intent.

Senator Grosfield said his second question is on page 2 under amendment 11. Under subsection 5, you are saying "after the accused person has been given actual notice". He asked what would constitute "actual notice". Senator Towe said "actual notice" would be the written or spoken words to the stalker.

Senator Grosfield said he understood that part, but taking it a step further, if you have the little girl there and she yells at the guy to leave her alone. He asked if that would be "notice". Senator Towe said he believed that would be questionable. From the County Attorney's standpoint, he would hope the County Attorney would give a better job of "actual notice". If that is all they have to go on and it is a real serious matter, it is conceivable they might say that was "notice", but questionable. Senator Grosfield said he was thinking about no witnesses, etc. and how something like that could be proved.

Senator Grosfield said on page 5, (3) it reads "the prosecuting attorney, or court".."shall immediately notify". He asked if that means they have to actually see the person, send them a letter, or how do we know that notice has been received. Senator Towe said the prosecuting attorney will probably take the steps that are necessary, whether by phoning the individual, contacting

someone he knows will get to the individual, or in the absence of the prosecuting attorney, the Judge will do so. It may mean simply putting something in the mail, but he felt that was not sufficient because they want it immediately done. The obvious situation is, with the little girl, the guy can pick up the stalker and he makes bail, we want the mother to know immediately that he will be out and can stalk again.

Senator Grosfield said perhaps there should be something about mail in the amendment. He pointed out how undependable mail was and said he did not believe it could be considered immediate notice.

Senator Doherty said in that same section, we are talking about bail, so at this point the victim is not a victim, the victim is an alleged victim.

Chair Yellowtail asked if there would be any reason why the term "alleged" could not be added. This was agreed to by the committee.

Senator Bartlett said a person has to appear before a Judge before bail can be offered. She asked if, at that point, for the judge to deny bail, saying the situation is such that there may be danger to the victim.

Senator Halligan said the Court would have made a determination of this person's conduct and if the behavior was of such a nature as to be dangerous to the victim, the bail would have been set so high they would not have been able to get out that easily. Constitutionally you cannot prevent a person from making bail. He said in setting bail the court will look at the prosecuting attorney's statement about any imminent danger to the victim.

Senator Bartlett asked, if it was within the Judge's discretion, could the Judge conclude that bail is not warranted in a certain set of circumstances. She asked if at any point, that was an option for the Judge. Senator Halligan answered yes, it is, not in the long term, but can be in the short term. He could say come back in 48 hours and we will discuss it again, but when you start denying bail there are some real constitutional rights involved.

Senator Towe said this was one of the things the subcommittee had looked at and said in Indiana, Illinois and two or three other states, they have attempted to deny bail in their stalking law as an act of discretion. That is exactly where they have run into constitutional problems. He said the subcommittee did not want to get their bill all tangled up in constitutional issues, and for that reason, avoided doing that. By calling attention to the fact that there is an alleged victim, you are calling the Court's attention to the fact that this is a serious matter. The Court can weigh all the factors and decide to put a very heavy bail,

and may be able to use its discretion to solve the problem that way without crossing the constitutional protection involved.

Senator Bartlett said, to make this clear, if the perpetrator were to violate a restraining order and be picked up in an ongoing stalking situation, or if the restraining order was issued originally because of a stalking situation, this bail schedule would then apply because he would have to go before a Judge.

Vote: The MOTION TO ADOPT THE AMENDMENTS (exhibit 5) PASSED with Senator Doherty voting NO.

Senator Doherty said he would like the record to show that he believes the additional language in the statement of intent, identifies the rights that we are not attempting to infringe. is a grave mistake and may bring the constitutionality of the whole act into question. He believed that if the Legislature is not attempting to infringe on any constitutional protected rights, it is enough to say that.

Senator Towe said he had some language he had promised to bring up, and did not want it in the previous motion because it was a separate issue. He believed it might have some merit, but may help get the bill passed. In the statement of intent we just drafted, it contains the sentence "further, it is the intent of the Legislature that the intent does not apply to an otherwise lawful activity" and his amendment would say ", including, but not limited to, legitimate investigation by law enforcement, licensed private investigators, legitimate journalists and collection of lawful debts".

Motion: Senator Towe MOVED to AMEND the statement of intent as stated in the paragraph above.

Discussion: Senator Towe said it is, in effect, putting a laundry statement back in the statement of intent. He said it is not in the body of the bill, but having it in the statement of intent gives people the assurance that it does not apply to them.

Senator Halligan said we are falling into the quick sand of trying to articulate the angels on the head of a pin, and it will not work.

Vote: The MOTION FAILED with Senator Towe, Senator Crippen and Senator Rye voting YES.

Motion/Vote: Senator Towe MOVED SB 37 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 140

Discussion: Chair Yellowtail said there are some amendments and asked Mr. Melby to explain the amendments requested by the

ROLL CALL

SENATE COMMITTEE Judiciary DATE 1-25-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blavlock	X		
Senator Rye	X		

SENATE STANDING COMMITTEE REPORT

Page 1 of 6
January 26, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 37 (first reading copy -- white), respectfully report that Senate Bill No. 37 be amended as follows and as so amended do pass.

Signed: William "Bill" Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, line 5.

Following: "ORDERS;"

Insert: "REQUIRING NOTIFICATION OF VICTIMS WHEN ACCUSED STALKERS ARE RELEASED ON BAIL; EXEMPTING THE OFFENSE OF STALKING FROM BAIL SCHEDULES; AMENDING SECTIONS 40-4-121, 46-9-108, AND 46-9-302, MCA;"

Following: "AN"

Insert: "IMMEDIATE"

2. Page 1, line 7.

Following: line 6

Insert: "

STATEMENT OF INTENT

The legislature finds that there are not adequate provisions in existing state law to protect stalking victims. Civil restraining orders are often difficult to obtain and alone are often inadequate to deter a stalker from committing an act of violence. It is the intent of the legislature to criminalize and punish the activities of people who repeatedly watch, follow, harass, or threaten someone when such activity causes the victim substantial emotional distress or reasonable apprehension of bodily injury or death. It is the intent of the legislature to give law enforcement personnel recourse before an attack takes place. Further, it is the intent of the legislature that the offense not apply to an otherwise lawful activity. In particular, the legislature does not want to place a chill on constitutionally protected rights, such as the right to demonstrate, to assemble, and to picket or on the full exercise of freedom of speech and freedom of the press."

3. Page 1, lines 10 through 13.

Following: "if" on line 10

Strike: remainder of line 10 through "request," on line 13

Insert: "the person purposely or knowingly"

ADD

Amd. Coord.
Sec. of Senate

201103SC.San

4. Page 1, line 14.
Strike: "the stalked"
Insert: "another"

5. Page 1, line 15.
Following: "by"
Insert: "repeatedly"

6. Page 1, line 16.
Strike: "knowingly and repeatedly"

7. Page 1, line 18.
Strike: "knowingly and repeatedly"
Following: "threatening,"
Insert: "or"

8. Page 1, line 19.
Strike: ", alarming, or annoying"

9. Page 1, lines 22 through 24.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

10. Page 2, line 13.
Following: "granted"
Insert: ", as set forth in 40-4-121,"

11. Page 2, lines 16 through 19.
Strike: subsection (5) in its entirety
Insert: "(4) For the purpose of determining the number of convictions under this section, "conviction" means:
 (a) a conviction, as defined in 45-2-101, in this state;
 (b) a conviction for a violation of a statute similar to this section in another state; or
 (c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.
 (5) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person.

Section 2. Section 40-4-121, MCA, is amended to read:

"40-4-121. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child or from stalking, as defined in [section 1];

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) (i) alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member or the threat of physical abuse, harm, or bodily injury against the petitioner by a family or household member that causes the petitioner to reasonably believe that the offender has the present ability to execute the threat; and or

(ii) alleging a violation of [section 1]; and

(b) requesting relief under Title 27, chapter 19, part 3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate. Persons who may request relief under this subsection include spouses, former spouses, and persons cohabiting or who have cohabited with the other party within 1

year immediately preceding the filing of the petition, and persons alleging a violation of [section 1].

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(c) terminates upon order of the court or when a final decree is entered or when a petition for dissolution or legal separation is voluntarily dismissed; and

(d) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626 or [section 1]."

(8) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown."

Section 3. Section 46-9-108, MCA, is amended to read:

"46-9-108. Conditions upon defendant's release -- notice to victim of stalker's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if

unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of [section 1] is admitted to bail, the prosecuting attorney, or the court in the absence of the prosecuting attorney, shall immediately notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

Section 4. Section 46-9-302, MCA, is amended to read:

"46-9-302. Bail schedule -- acceptance by peace officer.

(1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is domestic abuse or, any assault against a family member or a household member, or stalking, as defined in [section 1].

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered.""

Renumber: subsequent sections

12. Page 2, line 25.

Following: "effective"

Strike: "30 days after"

Insert: "on"

-END-

Amendments to Senate Bill No. 37
First Reading Copy (white)

Requested by Subcommittee (Towe, Franklin, Halligan)
For the Committee on Judiciary

Prepared by Valencia Lane
January 19, 1993

1. Title, line 5.

Following: "ORDERS;"

Insert: "REQUIRING NOTIFICATION OF VICTIMS WHEN ACCUSED STALKERS
ARE RELEASED ON BAIL; EXEMPTING THE OFFENSE OF STALKING FROM
BAIL SCHEDULES; AMENDING SECTIONS 40-4-121, 46-9-108, AND
46-9-302, MCA;"

Following: "AN"

Insert: "IMMEDIATE"

2. Page 1, line 7.

Following: line 6

Insert: "

STATEMENT OF INTENT

The legislature finds that there are not adequate provisions in existing state law to protect stalking victims. Civil restraining orders are often difficult to obtain and alone are often inadequate to deter a stalker from committing an act of violence. It is the intent of the legislature to criminalize and punish the activities of people who repeatedly watch, follow, harass, or threaten someone when such activity causes the victim substantial emotional distress or reasonable apprehension of bodily injury or death. It is the intent of the legislature to give law enforcement personnel recourse before an attack takes place. Further, it is the intent of the legislature that the offense not apply to an otherwise lawful activity. In particular, the legislature does not want to place a chill on constitutionally protected rights, such as the right to demonstrate, to assemble, and to picket or on the full exercise of freedom of speech and freedom of the press."

3. Page 1, lines 10 through 13.

Following: "if" on line 10

Strike: remainder of line 10 through "request," on line 13

Insert: "the person purposely or knowingly"

4. Page 1, line 14.

Strike: "the stalked"

Insert: "another"

5. Page 1, line 15.

Following: "by"

Insert: "repeatedly"

6. Page 1, line 16.

Strike: "knowingly and repeatedly"

7. Page 1, line 18.

Strike: "knowingly and repeatedly"

Following: "threatening,"

Insert: "or"

8. Page 1, line 19.

Strike: ", alarming, or annoying"

9. Page 1, lines 22 through 24.

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(a) a conviction, as defined in 45-2-101, in this state;

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(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

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(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any

proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child or from stalking, as defined in [section 1];

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

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(ii) alleging a violation of [section 1]; and

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(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

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(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

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(c) terminates upon order of the court or when a final decree is entered or when a petition for dissolution or legal separation is voluntarily dismissed; and

(d) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626 or [section 1]."

(8) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown."

{ Internal References to 40-4-121:

x3-10-301	x27-19-201	x27-19-316	x40-4-122
x40-4-123 (2)	x40-4-124 (3)	x40-4-125	x45-5-626}

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(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own

essentially the same guidelines as the Skiers Responsibility Code. Mr. Melby said the notice at ski areas is different than riding horses. The Skiers Responsibility Act requires that ski areas post a notice of the code that's published by the National Ski Area Association. There is no code of conduct for participants in equine activities that could be similar to that. REP. BROOKE said there's enough language in the bill that gives direction to what a participant in equine activities is responsible for. Mr. Melby is not saying it can't be done, but there is a world of difference between the operation of equine activities and ski areas where there is one particular area to get on a lift, and familiar areas where warning signs are posted. REP. BROOKE's suggestion would be very difficult to implement.

REP. RUSSELL asked Mr. Hill if there are any federal statutes that may be comparable to this bill. Mr. Melby was not aware of any federal legislation that deals specifically with tort liability in a state district court.

Mr. Hill made it clear to the committee that MTLA's proposed amendment would not require horse owners to post notice. The MTLA believes it's relevant that the skier and snowmobile liability statutes in Montana require that posting of notice. But posting notice is simply an alternative way to make sure that people are aware of the risks they're supposedly assuming. The amendment does the same thing without requiring notice. This was discussed in the Senate proceedings, and the proponents of the bill did not approve amendment. The amendment is taken verbatim from the purpose clause of the bill; it's consistent with what all the supporters of the bill intend the bill to do, and it accurately states the negligence standard.

REP. VOGEL asked Mr. Hill how adequate notice would be posted. He doesn't feel it's realistic. Mr. Hill said simply put an amendment into the inherent risk that clarifies exactly what the bill says is its purpose in section 1. See EXHIBIT 13.

Closing by Sponsor: None

HEARING ON SB 37

Opening Statement by Sponsor:

SEN. TOM TOWE, Senate District 46, Billings, said it has become quite apparent that there's a void in the law which needs to be filled. Following, intimidating, harassing and threatening where there is no actual physical touching, battery or assault is currently not a crime; but it can be very devastating. In 1989, five women in Orange County, California, were murdered, and each had been stalked in advance of the murder. In Wyoming, a woman was murdered after being stalked. In Montana, several incidents have received wide publicity of people who have been stalked.

Intimidation and threatening behavior has an enormous effect, and yet, it is not an offense. SB 37 corrects that situation. This bill makes it a crime to stalk.

There are four elements to the offense of stalking. 1) It must be purposely or knowingly done; 2) it must cause another person substantial emotional distress or reasonable apprehension of bodily injury or death; 3) it must be done repeatedly; and 4) it must harass, threaten or intimidate the person.

The offense is not difficult; the problem is the exemptions of the bill. This bill is patterned after the 1990 California statute. California was the first state to pass a stalking bill, and since then, 30 states have passed a stalking law. In many of the states, there is an exemption. California has an exemption for constitutionally protected activity. There is also an exemption for organized labor activity.

SEN. TOWE said people throughout Montana were asking for further exemptions, including private investigators, investigative reporters, journalists, Right-to-Life organizations, and the Worker's Compensation Fund. When these people approached the bill drafters, the drafters felt this was the wrong approach to the bill. The Senate subcommittee suggested including a statement of intent that the legislature doesn't want to prohibit constitutionally protected activity; therefore, anything that is constitutionally protected is not subject to this statute. Perhaps by stating that as a statement of intent, it is not necessary to actually put a "laundry list" of exemptions in the bill. The intent of the bill is on page 2, lines 1-8.

The first offense is misdemeanor, a one-year prison term or a \$1,000 penalty or both; the second or subsequent offense would be a felony. If there's a violation of a restraining order, the first offense could be a felony, and that would be with a five-year felony or \$10,000 fine or both. The convicted person may be sentenced to pay all medical counseling and other costs incurred by the victim as a result of the offense. The counseling costs, probably the biggest item in terms of dollar amounts involved, could be assessed to the defendant.

A provision has been added to include a restraining order. There is a specific amendment to the family law section that says for stalking purposes, the victim does not have to be related to the stalker. A conviction may, for prior conviction purposes, be a conviction from another state, and forfeiture of bond is the same as the conviction.

In the event that a stalker is released from prison, there is a provision on page 9, lines 14-19 to the effect that, if a person is released on bail, the court must cause an attempt to be made to notify the alleged victim or victim's parents as soon as possible. The bail schedule is not permissible for a stalker. The stalker has to go through the Justice of the Peace or to

District Court to determine how much the bail can be, as done in domestic abuse matters.

With regard to notification, SEN. FRED VAN VALKENBURG, Senate District 30, Missoula, believed the wording was awkward and could cause difficulty, and SEN. TOWE has proposed an amendment to correct that concern. The amendment says that rather than the attorney being held responsible, the court will be held liable to cause an attempt to be made to call the victim. SEN. TOWE distributed a petition for the stalking bill consisting of 1,300 names and the National Conference of State Legislators Legisbrief summarizing stalking bills enacted throughout the country. EXHIBITS 14 and 15.

Proponents' Testimony:

REP. RANDY VOGEL, House District 86, Billings, is a Billings police officer who has been involved in many of these cases. He said that stalkers generally intimidate younger people, particularly females, and are generally related to the victim.

Doreen and Scott Pabich, South Side Task Force and parents of stalked daughter, said it has been a year since Ms. Pabich's daughter has been stalked. She emphasized the fact that the stalker would let her daughter know that he was not going to leave and would continue to stalk her.

Greg Hoppe, Montana Magistrates Association, said this bill will allow the courts to bring jurisdiction to protect and serve the citizens upon jurisdiction.

Bill Ware, Chief of Police, Helena, added that SB 140 will make law enforcement proactive in being able to prevent an assault rather than reactive as in the law today.

Rodney L. Garcia, South Side Task Force, Billings, provided written testimony. EXHIBIT 16

Jim Smith, Montana Psychological Association, said that many psychologists work with both the perpetrators and the victims of this offense. He said people who stalk are severely disturbed, and the people to whom this is done are severely traumatized.

John Conner, appearing on behalf of the Attorney General's office and the Montana County Attorney's Association (MCAA), stated that the MCAA requested its own draft of a stalking law which was introduced by SEN. VAN VALKENBURG, but the request was withdrawn in preference to SEN. TOWE'S bill. MCAA supports the amendments in the bill now. Concerns have been voiced about the notice provision and the fact that it may create an unconstitutional presumption. Mr. Conner has studied the issue and doesn't believe that's the case. There was also a concern voiced in the Senate about the fact that legitimate organizations might be

forced into situations where they might be prosecuted for an otherwise legitimate activity under the terms of this bill. Mr. Conner said the statement of intent addresses that concern, and quite frankly, Mr. Conner said prosecutors don't have the time to prosecute cases other than legitimate criminal cases.

Amy Pfeifer, Women's Law Section of the State Bar of Montana, said that the Women's Law Section recognizes the need for these protections and urges the House's support of the bill as amended by the Senate.

Arlette Randesh, Montana Right To Life, urged the consideration of an amendment specifically exempting pro-life activity. Right To Life is concerned that the abortion providers of Montana will use stalking laws to stifle pro-life sidewalk counseling. SEN. TOWE has heard the pro-lifers' objections and believes that the wording and intent of SB 37 is sufficient to cover their concerns. Ms. Randesh doesn't believe it is. She urged an adoption of a specific amendment excluding lawful pro-life activities from being construed as stalking.

Laurie Koutnik, Executive Director, Christian Coalition of Montana, said that, although everyone recognizes the need for this very important protection, Christian Coalition also recognizes that some clarification needs to be done on the bill. Ms. Koutnik has received calls from various organizations throughout the state, and the callers asked if this bill would include pro-life activities in the state. Some of the concern came after articles that appeared in newspapers throughout the state covering reaction of this bill's passage through the Senate, in which it mentioned how it will affect pro-life activists picketing abortion clinics. This gives pretence to those who believe there is a hidden motive to this bill. Ms. Koutnik is concerned that abortion advocates will attempt to portray all direct action of pro-life activities as harassment. She asked the committee to consider an amendment in the regard to Senate 37 to keep this as honest, stalking measure.

Sharon Hoff, Montana Catholic Conference (MCC), stated that MCC stands in support of SB 37 and would also like to encourage the committee to ensure that the statement of intent is strong enough to clarify that pro-life activities can take place legitimately and that they are protected.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. WHALEN asked SEN. TOWE if SB 37 was put into a Senate subcommittee and who the members were. SEN. TOWE said he was asked to serve, as were SEN. EVE FRANKLIN, Senate District 17, Great Falls; SEN. STEVE DOHERTY, Senate District 20, Great Falls;

and SEN. MIKE HALLIGAN, Senate District 29, Missoula'. REP. WHALEN asked if it was true there were no Republicans on that subcommittee, to which SEN. TOWE responded that SEN. LORENTS GROSFIELD, Senate District 41, Big Timber, had been invited but didn't attend. Non-legislative members present included Mr. Conner and Ms. Pfeifer. SEN. TOWE said the subcommittee drafted the proposed amendments which were discussed on the Senate floor. He doesn't feel the makeup of the committee or the presence of the people at that committee really reflected too much on the bill's outcome, as everyone carefully drafted the bill.

REP. WHALEN asked whether or not the people from Montana Right To Life organization were present or had any input into the amendments attached to the bill in the Senate subcommittee. SEN. TOWE answered that he doesn't recall that they were present at the subcommittee meeting. REP. WHALEN asked whether SEN. THOMAS KEATING, Senate District 44, Billings, had attempted to offer an amendment with regard to specific exemptions to the statute, and those were voted down. SEN. TOWE told REP. WHALEN that he should be aware that at the time the subcommittee was set up, a number of comments were about problems with the "laundry list" of exemptions. There were already three exemptions in the bill, as well as several other organizations that asked to be included in the bill, all very legitimate, but the subcommittee was convinced they would be asked to add more. By the time the bill got to the Governor's office, it would have had a huge laundry list of exemptions. The subcommittee suggested that the best way to handle this issue was to add a statement of intent to the effect that this bill doesn't intend to get into constitutionally protected areas. REP. TOWE indicated that some labor leaders had already indicated they were unhappy with being included as an exempted part of the bill, and they preferred not to be singled out.

REP. WHALEN asked SEN. TOWE whether it was his intention to have the bill apply to any pro-life activities, and SEN. TOWE said no.

REP. BROOKE asked Mr. Smith if there is a connection between psychological clinics and pro-life organizations. Mr. Smith said there is no connection between the Psychological Association and the pro-life counseling that goes on in front of clinics. Beyond that, the state of Montana licenses and regulates over a hundred professions; to the best of his knowledge, pro-life counseling of the kind discussed in today's hearing is not licensed or regulated by the state of Montana.

REP. WINSLOW expressed her concern that SB 37 has turned into a pro/anti-abortion debate, and she doesn't think that's what should be discussed in this hearing. She asked SEN. TOWE how activities, such as those described by Ms. Randesh, would be exempted from the bill. SEN. TOWE said that the pro-life community shouldn't be concerned; he called the committee's attention to page 2 and read the four elements of offense of stalking. The pro-life community is worried that their "sidewalk

counselors" may be considered threatening and considered harassing, but in order to be guilty of the offense, they must purposely and knowingly cause emotional distress. He assumed these counselors were not doing that nor was that what they're intended to do. They're intended to simply pass out brochures to ask if people entering the clinic understand the alternatives. In SEN. TOWE'S opinion, this is legitimate, non-threatening behavior and does not cause emotional distress.

REP. WINSLOW asked SEN. TOWE how many times, for example, somebody would have to follow, intimidate by phone or by mail, etc. in order for there to be a stalking conviction. SEN. TOWE said the word "repeated" means more than once.

REP. GRIMES referred to page 2, lines 12-15, exemption penalty. He said that language was eliminated and replaced on page 4, lines 10-14, and asked, specifically, what the language "actual notice" on line 12 means. SEN. TOWE said that, when the bill was originally introduced, that was another element of the offense. As an added protection, the offender has to be warned that he has to stop stalking, and warned it is harassing behavior. If the person continues harassing behavior, only then can the victim prosecute. The Senate moved that concept out as an element, and put it in as a presumption on page 4. Actual notice means notice that the stalked person does not want to be contacted or followed.

REP. GRIMES referred to page 2, line 3 and said the word "chill" is foreign and asked if SEN. TOWE would be opposed to making the language stronger with the intent to not violate constitutionally protected rights. SEN. TOWE said that language is taken directly out of the United States Supreme Court decisions. The concept of "chilling" constitutional rights is a concept well-known in this country, and that means, in effect, causing people to back down in the exercise of their rights because they're afraid they might be prosecuted.

Closing by Sponsor:

SEN. TOWE hoped that the discussion would not detract from the real essence of the bill. There is a void in the law which needs to be filled. He cautioned the committee against the laundry list of exemptions. He stated that he believes SB 37 will work well they way it is drafted now.

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3-2-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary
DATE *March 2, 1993*

COMMITTEE

BILL NO.

SPONSOR(S)

T. Lowe

SB 37

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Eate Cholewa	MT Women's Lobby	X	
MAXINE HOMER	DISCIPLES OF CHRIST Mt. Christian Church	X	
Beth Lancaster	Self	X	
SHARON HOFF	MT Catholic Congress	X	
Gary Sell	Sidney High School	X	
Craig Gethardt	Sidney High	X	
BILL WARE, Chief of Police Helena	City of Helena MT. Asso. of Chiefs of Police	X	
Amy Pfeifer	Women's Land Section	X	
John Connor	ATTORNEY GENERAL & MT. CITY ATTYS ASSN	X	
Troy McGee	Montana Police Protective Assoc.	X	
CRAIG L. HOPE	MT MAGISTRATES ASSN	X	
MICHAEL S. MIZENKO	MT. STATE RIDG & CONTRACTORS ASSN MT ST. ASSN. OF PLUMBERS & PIPE FITTERS	X	
Marc Korting	Self	X	
Stacey Dorch		X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

JUDICIARY - House

COMMITTEE

BILL NO. SB 37

DATE 3/2/93 SPONSOR(S) TOWE

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Smith	Mt. Psych. Assoc.	✓	
Kelly Vollbath	Self	X	
Dorothy D. D. D.	SS Task Force	✓	
Acatt Patrick	Father		
Laurie Kostnick	Christian Coalition of MT	✓	
Grillo Noland	Montana People's Alliance	✓	
XXXXXXXXXXXX	XXXXXXXXXXXX	X	
MAZINE HENRY-	SS Task Force	X	
KARA RICHIE	"	X	
STEVEN RICHIE	"	X	
KRYSTAL HUST	"	X	
JOHN HUST	"	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON SB 344

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, Senate District 22, Helena, said that SB 344 clarifies when pre-sentence investigations occur. There has been confusion in the past about whether or not pre-sentence evaluations are always required for use. Judges will still be able to specify evaluations whenever they believe it will help them make an appropriate determination.

Proponents' Testimony:

Mike Ferriter, Chief, Community Corrections Bureau, said this is not the department's first attempt to revise and clarify this statute. In 1989 the department requested revisions in order to specify who was qualified to perform sex offender evaluations and who would pay for them. As a result of the 1989 and 1991 revisions, the language and the intent of 46-18-111 has become very skewed. SB 344 simply brings back some of the original language specifically addressing sex offenses, the need for evaluation of sex offenders, and the payment responsibility for these evaluations.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

EXECUTIVE ACTION ON SB 37

Motion/Vote: REP. WYATT MOVED SB 37 BE RECONSIDERED.

Discussion:

REP. WHALEN asked REP. WYATT on what basis the bill should be reconsidered. REP. WYATT said that many articles have appeared in the Great Falls Tribune and The Missoulian calling for the House Judiciary Committee to reconsider this bill due to the

murder of Dr. Dunn, the Florida physician who performed abortions. She asked the committee to reconsider also because too many people take the law into their own hands.

REP. WHALEN asked what the death of Dr. Dunn had to do with the committee's action on this bill. REP. WYATT said the point, in general, of the stalking bill is to stop behavior before tragedy occurs. She hopes this legislation protects people from being abused, murdered or offended before those things can happen, so long as those protections do not breach constitutionally protected authority. REP. WHALEN didn't see the connection between the stalking bill and that act of murder. He said that the state of Florida has had a stalking bill for two years, and it didn't protect Dr. Dunn from being murdered.

REP. BROOKE doesn't think the state of Montana is far from the point of having an incident like the one in Florida. She reiterated REP. WYATT's statements, that this bill is an interim measure, a deterrent, a warning to abuse, assaults, murders and more physically destructive damage to people and their property. She emphasized that Montana has a reputation for acts of violence in this area. She urged the committee's vote of reconsideration.

Further testimony in support of SB 37 had been sent by SEN. MAX BAUCUS, United States Senate, Washington, D.C., EXHIBIT 7, and Janet Cahill, Director, Violence Free Crisis Line, Kalispell, EXHIBIT 8.

REP. GRIMES supported the motion to reconsider. He reiterated that it is not the committee's intention that this bill should cause harm or destruction to anybody or anything.

REP. SAYLES stated the committee has gotten away from the intent of the bill. This bill has to do with stalking. He said the committee has forgotten this bill was drafted because a juvenile was stalked for a year. He urged the committee to pass the bill as it is written and discontinue the discussion.

REP. TOOLE said that if Montana needs a stalking law, then it should be defined adequately. Constitutionally protected activities are not to be included.

Vote: SB 37 BE RECONSIDERED. Motion carried 15-3, with REPS. BERGMAN, CLARK and WHALEN voting no.

Motion/Vote: REP. RICE offered an amendment to strike an amendment passed by the committee March 12. That amendment is the sentence in the statement of intent on page 2, lines 2 and 3. Motion carried unanimously.

Motion: REP. RICE offered an amendment to insert on page 2, line 5, after "picket": ", to peacefully protest, to distribute literature, and to lawfully communicate with persons in public places,"

Discussion:

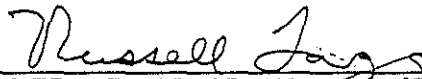
REP. RICE offered this amendment because he believes the bill needs clarification that the legislature is not trying to infringe on constitutionally protected rights.

Vote: REP. RICE'S amendment to peacefully protest carries 11-7 with REPS. BIRD, BROOKE, MCCULLOCH, RUSSELL, SAYLES, TOOLE and WYATT voting no.

Motion/Vote: REP. CLARK MOVED SB 37 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 12:00 p.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3-17-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karvl Winslow		✓	
Rep. Diana Wyatt	✓		

HR:1993

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CS-09

HOUSE STANDING COMMITTEE REPORT

March 18, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 37 (third reading copy -- blue) be concurred in as amended.

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. S. Rice

1. Page 2, line 5.

Strike: "AND"

Following: "PICKET"

Insert: ", to peacefully protest, to distribute literature, and
to lawfully communicate with persons in public places,"

2. Page 2.

Following: line 25

Insert: "(2) This section does not apply to a constitutionally
protected activity."

Renumber: subsequent subsections

3. Page 9, lines 15 and 16.

Strike: "prosecuting" on line 15 through "or the" on line 16

Strike: "in the absence of the prosecuting attorney," on line 16

4. Page 9, line 17.

Strike: "immediately"

Insert: ", as soon as possible under the circumstances, make one
and if necessary more reasonable attempts, by means that
include but are not limited to certified mail, to "

Committee Vote:
Yes 18, No 0.

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EXHIBIT 1
DATE 3-17-93
SB 37

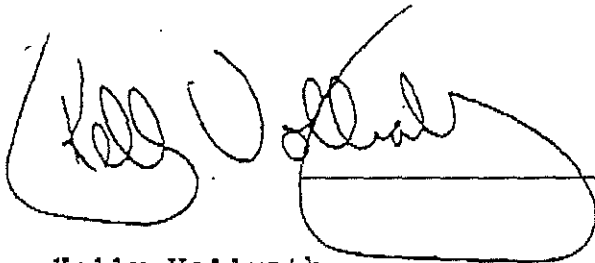
March 16, 1993
2909 3rd Ave. No.
Great Falls, MT. 59401

Mr. Russell Fagg, Chair
House Judiciary Committee
Fax # 444-4105

Dear Mr. Fagg:

Please accept and distribute to the members of the House Judiciary Committee the following fax that I received this morning from Senator Max Baucus, supporting the passage of Senate Bill 37 with no exemptions. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kelly Vollrath", is written over a horizontal line. The signature is enclosed within a large, loopy, handwritten oval or loop.

Kelly Vollrath

MAX BAUCUS
MONTANA

WASHINGTON, DC
(202) 224-3551

MONTANA TOLL FREE NUMBER
1-800-332-6106

United States Senate

WASHINGTON, DC 20510-2602

March 16, 1993

Mr. Kelly Vollrath
2909 Third Avenue North
Great Falls, Montana 59401

Dear Kelly:

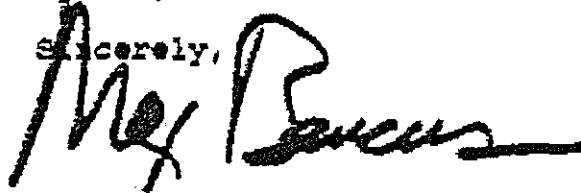
Thank you for getting in touch with my office concerning the anti-stalking legislation that is currently before the Montana State Legislature. I appreciate your bringing this matter to my attention.

I share your deep concern for people who have been victims of stalking in our state, and across the country. I also agree that we need to have strong legislation in place that makes stalking a punishable crime. Such legislation will not only help deter stalking in our state, but it will also protect people from unwelcome harassment or from being the victim of a senseless violent crime. Therefore, like you, I support this anti-stalking legislation that is currently being debated in the Montana State House of Representatives Judiciary Committee -- without any exemptions or amendments. I firmly believe that adding exemptions will only weaken the effectiveness of this important bill.

Again, thank you for contacting me about this matter and I hope you will not hesitate to let me know if I can be of further assistance.

With best personal regards, I am

Sincerely,



MSB/dwf

BILLINGS
(406) 557-2780

BORERMAN
(406) 886-8104

BUTTE
(406) 713-3700

GREAT FALLS
(406) 761-1574

HELENA
(406) 448-6480

KALISPELL
(406) 758-1150

MISSEOLA
(406) 228-3123

Beth Miksche
House Judiciary Committee

Janet Cahill, Director, Violence Free Crisis Line Kalispell,
Montana
Montana Coalition Against Domestic Violence

Testimony SB 37

In the twelve (12) years that I have been providing services to women and their children, I have seen the problem of domestic violence grow at an alarming rate. In my program the number of new cases increased 75% between 1989 and 1992. We used to ask why women stay in an abusive in an abusive relationship. Now we know that it is frequently more dangerous to leave than to stay. More women are dying when attempting to leave the relationship than if they stay. Annually, over 4,000 women each year are killed. We don't know how many of these in Montana are Domestic Violence related because they are lumped in with all other homicides. However, when we hear of a woman killed by estranged husband or boyfriend, it is probable their relationship was one of domestic violence in their relationship. Some women do try to leave even at great risk. They usually go to friends or family for assistance. According to statistics from 18 programs who provide victim services in Montana, shelter was provided to 5,551 women and 1,113 children for a total of 16,725 nights in 1992. 181 women were turned away because of being overcrowded or having lack of funds to provide services. 9,855 persons sought services as a result of domestic violence.

Since 1985 domestic abuse has been a crime. We have finally held offenders accountable for their actions. But in order to prevent the increasing costs to society, and particularly to Montana, in terms of health care, job loss, victims services, and counseling, we must continue to emphasize that offenders must change their behavior. Only